

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

ALBUR K. MILLER

JOINT APPENDIX—PART I
(Report, Annotated, and Order of the Board)

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

—
No. 17,135
—

INTERNATIONAL UNION OF MINE, MILL AND SHELTER
WORKERS, *Petitioner,*

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, *Respondent.*

—
On Review of Order of the Subversive Activities
Control Board

—
United States Court of Appeals
for the District of Columbia Circuit

FILED DEC 26 1963

FRANK S. ADAMS, WASHINGTON, D. C.
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CLERK

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United States Court of Appeals

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On Review of Order of the Subversive Activities
Control Board

JOINT APPENDIX—PART I

(Report, Annotated, and Order of the Board)

SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 116-56

ROBERT F. KENNEDY,
Attorney General of the United States,
Petitioner

v.

INTERNATIONAL UNION OF MINE, MILL AND SMELTER
WORKERS, *Respondent*

Lafayette E. Broome and Francis X. Worthington,
for petitioner.

Nathan Witt and Joseph Forer, for respondent.

REPORT AND ORDER OF THE BOARD

Issued May 4, 1962

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I

SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 116-56

ROBERT F. KENNEDY,
Attorney General of the United States,
Petitioner

v.

INTERNATIONAL UNION OF MINE, MILL AND SMELTER
WORKERS, *Respondent*

REPORT OF THE BOARD

This proceeding is before the Board for determination whether respondent is a Communist-infiltrated organization as defined in section 3 of the Subversive Activities Control Act of 1950, as amended by section 7 of the Communist Control Act of 1954.¹ After protracted hearings before Board Member Francis A. Cherry (hereinafter referred to as the "Hearing Member") both sides submitted proposed findings and conclusions, and Member Cherry, on December 26, 1961, issued and served a Recommended Decision in which he concluded that the Board should grant the petition

¹ Section 3(4A) of the Act defines a Communist-infiltrated organization as "any organization in the United States (other than a Communist-action organization or a Communist-front organization) which (A) is substantially directed, dominated or controlled by an individual or individuals who are, or who within three years have been actively engaged in, giving aid or support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title, and (B) is serving, or within three years has served, as a means for (i) the giving of aid or support to any such organization, government, or movement, or (ii) the impairment of the military strength of the United States or its industrial capacity to furnish logistical or other material support required by its Armed Forces: *Provided, however,* That any labor organization who is an affiliate in good standing of a national federation or other labor organization whose policies and activities have been directed to opposing Communist organizations, any Communist foreign governments, or the world Communist movement, shall be presumed prima facie not to be a 'Communist-infiltrated organization'."

of the Attorney General for an order of the Board determining that respondent is a Communist-infiltrated organization.

II On February 1, 1962, respondent filed its exceptions to the Recommended Decision; on February 16, 1962, petitioner filed a memorandum with respect to respondent's exceptions; and on March 1, 1962, respondent notified the Board that it would not submit a reply to petitioner's memorandum. Both sides having waived oral argument, the proceeding was thereby submitted on the record. The Board has considered the Recommended Decision in the light of respondent's exceptions, petitioner's memorandum, and the transcript of the hearing and exhibits.

Respondent's exceptions cover 41 typewritten pages with 65 numbered paragraphs and many subparagraphs. Certain of the exceptions attack the motives and integrity of the Hearing Member, even to the extent of accusing him of accepting "perjured testimony" and of joining in the suppression of evidence. This appears in exception number 1 and runs through others. Exception 1 is as follows:

Respondent excepts to the Recommended Decision as a whole because the findings of fact are not based on the evidence, because the conclusions of law are in violation of the statute and the Constitution, and because the Recommended Decision, hereinafter referred to as R.D., does not report fully and fairly on the credibility of petitioner's witnesses and on petitioner's knowing use of their perjured testimony and his suppression of evidence and on other matters. The Board should therefore dismiss the petition, or, in the alternative, order a new hearing before a different examiner.

The Board has carefully reviewed the record and finds the challenges to the Hearing Member to be wholly and completely unwarranted. Some of the exceptions will be

covered specifically below and will illustrate the lack of any justification for the unfounded accusations.²

III In exception 2 respondent accuses the Hearing Member of "deliberate refusal" to make a ruling on the three year period referred to in the statute because doing so would have made it impossible, says respondent, to conclude that the evidence was sufficient to support the ultimate conclusion that respondent is a Communist-infiltrated organization. This is a misstatement of the record. The exception warrants discussion only because any possible doubt which it creates should be clarified.

The statutory definition of a Communist-infiltrated organization, quoted in footnote 1, *supra*, refers to individuals who "are, or within three years have been actively engaged in, giving aid or support to a Communist-action organization, . . ." In the exception respondent "excepts to the failure of the R.D. to conclude that the three-year period is the period immediately prior to the date on which the petition was filed, or the period from July 28, 1952, to July 28, 1955."³ (Exception 2, p. 2.) The fact is that the Hearing Member treated the three year period as encompassing, falling within, and consisting of those dates for the purposes of this proceeding. This is clear from the citation in the Recommended Decision to the written ruling issued by the Hearing Member on July 13, 1960, and by the statement in the Recommended Decision that the Hearing Member agrees with the position that the three year period is the

² The attacks which have been made upon the Hearing Member after his having found against respondent in the Recommended Decision are in sharp contrast to the statement made by counsel for respondent at the close of the hearing. At that time, counsel stated, among other things: "I want to say on the record that I deeply appreciate the courtesy and patience you have shown in this proceeding. . . . I am anxious that the record show my strong feeling that you have conducted this hearing in the very best traditions, even though I have disagreed with you on many occasions, that is an inherent part of any law-suit and particularly a law-suit of this kind. You are a gentleman and a scholar and I appreciate it." (Tr. 9720-9721.)

³ The three year period also appears in various of the considerations set forth in section 13A(e).

three years prior to the date of the filing of the petition.⁴ (See finding 49 and footnote 2 at page 14 of the Recommended Decision.)

While the Board agrees with counsel for petitioner and the present position of counsel for respondent that for purposes of this proceeding the three year period is from July 28, 1952, to July 28, 1955, this does not mean that all evidence of events and occurrences before and after the period was automatically inadmissible. The evidence of

this type that was received and considered by the IV Hearing Member was properly admissible and the exceptions thereto are denied. As stated in the Recommended Decision, evidence as to events and occurrences outside the three year period was illuminating. This principle was recognized by the Supreme Court in *Communist Party of the United States v. Subversive Activities Control Board*, 367 U.S. 1, where the Court said at page 69:

Where the current character of an organization and the nature of its connections with others is at issue, of course past conduct is pertinent. Institutions, like other organisms, are predominantly what their past has made them. History provides the illuminating context within which the implications of present conduct may be known.

There is ample evidence of record of events, occurrences and activities during the period from July 28, 1952, to July 28, 1955. Moreover, and as noted in the Recommended De-

⁴ It is noted that counsel for respondent, not the Hearing Member, has vacillated as to the meaning of the three year period. Based upon the record as it existed at the time, the Hearing Member in his above mentioned memorandum ruling of July 13, 1960, noted that: "Both petitioner and respondent agree that the computation of time concerning the three year period dates back from the filing of the petition and petitioner concedes that evidence of infiltration must be introduced within the three year period." This seems to still be the position of respondent based upon the above quoted language from exception 2. However, at the very close of the hearing, when the Hearing Member was attempting to make abundantly clear the positions of the parties, counsel for respondent stated: "... our position is that it has to be three years from the date of the Board's order." (Tr. 9719.)

cision, the continuity of significant facts and circumstances from dates prior to July 28, 1952, through dates extending well beyond July 28, 1955, renders questions as to the three year period relatively immaterial. By way of example, many of the same persons who constituted the important leadership of respondent during the three year period also held leadership positions for varying numbers of years both before, during, and after the year period. Thus, as the record shows, respondent at the date of the filing of the Attorney General's petition was directed, dominated, and controlled by substantially the same individuals who had dominated and controlled the organization for many years and who continued to exercise direction and control of the organization throughout the years during which this hearing extended. The substantial number of these continuing leaders of respondent have been members of or sympathetic to the Communist Party and all of them have and continue to give aid and support to the Communist Party.

The various aspects of the three year period are raised in exceptions 2, 4, 11, 24, 27, 36, and 54. The Board finds these exceptions to be without merit and to neither justify nor require any changes in the findings and conclusions in the Recommended Decision.

A main thrust of respondent's exceptions is directed to the credibility of petitioner's witnesses, particularly four of them—Bellarmino Duran, Fred Gardner, Barbara Hartle, and Harold Kent. The exceptions also attack petitioner, claiming the knowing use of perjured testimony and the suppression of evidence. Exceptions in which credibility considerations are raised include numbers 3, 4, 5, 6, 7, V 8, 9, 19, 30, 33, 34, 36, 37, and 47. Each of the credibility considerations has been considered and evaluated.⁵ The Hearing Member having observed the wit-

⁵ Footnote 1 to finding number 31 on page 9 of the Recommended Decision lists the names of six witnesses who after leaving Mine-Mill became members of rival unions that had engaged in campaigns to win over Mine-Mill members to the rival unions. Exception 19 states that three other witnesses were con-

nesses during their direct testimony and on cross-examination concluded that none of the witnesses—respondent's as well as petitioner's—should be discredited and the Board agrees. The record does not support or justify respondent's charges that petitioner's witnesses testified perjurally, and this, of course, renders without merit the contentions that petitioner knew the witnesses were lying.

In exception 7(a) respondent renews its motion, filed August 3, 1960, to strike all of the testimony of the witness Hartle. This motion is based upon the contention that Hartle's "testimony is tainted because she testified falsely to the knowledge of petitioner in the *American Committee* case before this Board (Docket No. 109-53)." The renewed motion is denied for the reasons given in the Report of the Board on Reconsideration, issued March 8, 1962, in *Robert F. Kennedy, Attorney General v. American Committee for Protection of Foreign Born*.

With respect to the witness Duran, the contention (exception 5) that he should not be credited is based in part⁶ upon his testimony that one Elayne Goldstein was present at a particular meeting of the Communist Party while an earlier report that Duran made to the Federal Bureau of Investigation listing those present at that meeting did not include her name. No finding that Elayne Goldstein attended the meeting is made in the Recommended Decision. However, the

nected with other unions after leaving Mine-Mill. These were Homer Wilson, Moriarity, and McLean. There is nothing in the record to show that the fact that these witnesses later joined other unions caused the witnesses to testify falsely and are not to be credited. Footnote 2 to finding number 31 lists witnesses who had previously testified about Mine-Mill in other instances. Exception 19(b) points out that in addition to those listed, the witness Kent testified before a grand jury in 1956. This has been taken into consideration.

⁶ Other points raised by respondent are: (1) that Duran testified that he made no reports to the F.B.I. after the indictment in the Denver Smith Act (Bary) case, whereas the record shows that he did in fact make reports after the indictment, and (2) that Duran's testimony and the records of the F.B.I. differ on how much Duran was paid for expenses as compared with services while serving as an informant. These matters have been considered in determining that Duran is not to be discredited.

possible contradiction by omission resulting from the absence of her name in an F.B.I. report does not warrant discrediting Duran's testimony on other subject matters.

VI Regarding the witness Gardner, respondent devotes over eight pages of the exceptions (exception 6, pages 7-15) to matters which it is contended show that all of Gardner's testimony should be stricken and no findings based thereon. To a considerable extent respondent relies upon rebuttal testimony of its witnesses Salvas and Mooney which in instances contradicted Gardner, or so it is contended. Review shows that in none of the instances of any significance was there necessary conflict. Consideration of the exceptions going to Gardner's credibility does not warrant any changes in the findings in the Recommended Decision based upon Gardner's testimony.

In exception number 8 respondent maintains that none of the testimony of the witness Kent should be credited and that the petition of the Attorney General should be dismissed because of alleged suppression by petitioner of evidence with respect to an item of Kent's testimony having to do with Irving Dichter, an official of respondent. The Recommended Decision finds that Dichter was a member of the Communist Party and active in the trade union work of the Party. The findings relating to Dichter, which appear at pages 17 and 18 of the Recommended Decision, are based upon the testimony of Rowena Paumi, Kent, and Gardner. Dichter was not called to deny or rebut the testimony given by these witnesses as to his Communist Party membership and activities.

Kent testified to Dichter's activities in early 1953 with the Trade Union Commission of the Communist Party and his activities in 1954 as a fellow member with Kent of a concealed or secret State Board of the Communist Party in Connecticut. This testimony was credited and findings are made thereon in the Recommended Decision. In addition, Kent testified to a conversation that he had with Dichter

in the fall of 1955. No finding is made in the Recommended Decision as to this conversation. In his testimony Kent said that Dichter told him in this conversation that "he hadn't seen anyone since he signed the non-Communist affidavit" and that Dichter said "In fact, I haven't seen anyone before that time," which, according to Kent, meant before Dichter signed the affidavit. (See tr. 1718.) Counsel for petitioner produced for respondent's use in cross-examination the reports that Kent had made to the F.B.I. on subject matters about which he testified in this proceeding. In the memoranda of the F.B.I. agents reporting on their interviews with Kent (M.M. Exs. 48 & 49) it is stated that Kent related that Dichter had said that he had ceased all Communist Party activities since signing a non-Communist affidavit in conjunction with his union office, that Kent went on to say that Dichter immediately amended this and told him that in fact he, Dichter, had ceased all of his Communist Party activities prior to the time that he had signed the non-Communist affidavit. While these two versions may have meant the same thing to Kent, it is possible that

he did not fully remember the conversation at the VII time of his testimony, and the Hearing Member properly did not base any finding on the conversation. This does not mean, however, that because of a possible inconsistency in the two versions Kent's testimony on unrelated matters should be stricken. Nothing was developed to even remotely indicate that Kent knowingly testified falsely in this proceeding about the conversation. Moreover, the fact that his F.B.I. report was turned over to respondent negates the contention that petitioner suppressed evidence.

In exception 9 respondent excepts to the admission of any of the testimony of petitioner's witness Morales and of his reports to the F.B.I., which were admitted as past recollection recorded. This is based primarily upon respondent's statement, not supported by the record, that Morales' "memory was conveniently lost." (Exception 9, p. 18.) There was no error in the admission of Morales' reports. The record shows that the Hearing Member enforced strict re-

quirements in the admission of the Morales' reports as past recollection recorded.⁷ It is noted in this connection that every statement of Morales and every report of the F.B.I. even though not a statement of the witness under 18 U.S.C. 3500, touching the testimony given by Morales, was delivered to respondent for purposes of cross-examination but respondent waived further cross-examination and returned the documents.

The Recommended Decision sets forth in considerable detail, pages 4-9, the procedures followed and the situations and circumstances that developed with respect to the production to respondent for purposes of cross-examination of prior statements made by petitioner's witnesses to the F.B.I. Respondent's exception 13 objects to the acceptance by the Hearing Member in some instances of affidavits of F.B.I. agents, who prepared memoranda of interviews with certain witnesses, as extrinsic evidence to aid in determining whether the agents' memoranda qualified as statements of the witnesses so as to be producible to respondent. The procedure followed under the circumstances is affirmed.

Exception 14 challenges the denial of respondent's motion to dismiss the proceeding, and alternative motions, when petitioner elected not to produce the prior statements of six witnesses and moved to strike their testimony, which motion to strike was granted by the Hearing Member.

VIII There was no error in this regard. The Board accepts the Hearing Member's statement that he has in no way or manner been influenced from having heard the witnesses. In any event, the testimony was stricken and has not been part of the record reviewed by the Board.

⁷ When the matter arose during the hearing, respondent's objection was sustained to the first report offered for the reason that the recollection of Morales had not been exhausted on events recorded in the document. The Hearing Member ruled that such documents would be admitted only where a foundation was laid by showing that the witness had no recollection of the facts that the document was offered to prove, either independently or after his recollection was refreshed by the document. (Written ruling of the Hearing Member, July 2, 1957.)

In exception 15, respondent requests "appropriate review by the Board of all the documents sealed by the Hearing-Member (Nos. 24, 25, 29) pursuant to the procedure under 18 U.S.C. 3500." This has been done. The Board agrees with and affirms the excisions made by the Hearing Member and finds no errors in any other respects.

Respondent, in exception 23, excepts to a "finding" in footnote 1 at page 13 of the Recommended Decision that the individuals involved had knowledge of the nature and purpose of the Communist Party. The requirement of this knowledge appears in the evidentiary consideration contained in section 13A(c)(1) which, as applied to this proceeding, means that the Board shall consider the extent, if any, that the effective management of respondent is conducted by individuals who are, or within three years have been, members, agents, or representatives of the Communist Party, or engaged in giving aid and support thereto, with knowledge of the nature and purpose thereof."

The footnote 1 at page 13 of the Recommended Decision merely notes that "the undenied facts as to their statements, declarations, and conduct, as are set forth *passim*, require the conclusion that their Communist orientation could not have existed with innocence of the nature and purposes thereof." The Hearing Member later summarized the facts leading to the subsidiary conclusion that the individuals comprising the effective management of respondent had knowledge of the nature and purpose of the Communist Party, namely, activity in both Mine-Mill and in the Party, attending Communist Party conclaves, meeting with high functionaries of the Communist Party, and taking positions and carrying out activities consistent with Communist Party policy. These undenied and un rebutted facts properly lead to the conclusion for purposes of this proceeding

* This and the other considerations set forth in section 13A(c) are mere aids, not exclusive, in arriving at the ultimate finding, and no one item need be conclusive. (Cf. *Communist Party v. Subversive Activities Control Board*, 223 F.2d 531, 559-560.)

that the individuals had knowledge of the nature and purposes of the Communist Party.

All rulings made by the Hearing Member and to which respondent has taken exception have been reviewed and are affirmed. The Board has read and considered all portions of testimony referred to in the exceptions and not specifically mentioned in the Recommended Decision.

IX The Board has also reviewed and agrees with the findings or conclusions made from the evidence, including those which respondent contends were contrary to the evidence or not supported by sufficient evidence. A number of the findings are objected to as irrelevant. The Board does not agree that these findings are irrelevant to the various issues involved. All exceptions that are not specifically or by implication dealt with herein have been considered and are rejected.

Review of the record, the exceptions, and petitioner's memorandum results in the following changes or modifications in the Recommended Decision:

(a) The first sentence in finding No. 57, page 23, gives the year 1946 in which Homer Wilson had certain dealings with Maurice Travis. The year should be 1947 instead of 1946 and is hereby changed.

(b) Finding No. 78, page 38, refers in the first sentence to a Communist Party meeting attended by Duran at the home of one Mike Ross. In his testimony Duran gave the name of Beverly Mike Ross and since it is not clear on the record whether this is the same Mike Ross who was a functionary of respondent, the sentence is hereby deleted from finding No. 78.

(c) In finding No. 93(b), pages 43-44, reference is made to Hain being present at a discussion involving functionaries of respondent and a member of the Communist Party. It was Warren Henderson, not Hain, who was present at the meeting and testified about it. The finding is hereby modified to that extent.

(d) Finding No. 102(o), page 53, concerns the 1946 convention and includes among those elected to office the name of Jesse Van Camp as Board Member for District 4. The record is conflicting on whether Van Camp or one Leonard Douglas was elected to this position. Accepting the "Official Proceedings of the Forty-Second Convention" (M.M. Ex. 5) as controlling, the finding is changed to show Douglas instead of Van Camp as the nominated and thereafter elected Board Member for District 4 at that time (A.G. Ex. 108). This in turn requires modification of the finding with respect to the Robinson factions. While the number in the anti-Robinson faction is unaffected and remains at three, the number in the pro-Robinson faction is changed from nine to eight since there is not sufficient evidence about Douglas to determine in which faction he belonged.

Based upon review and consideration of the entire record,
 X the Board hereby adopts and makes as its own the findings and conclusions in the Recommended Decision as modified and changed herein. On the basis of the findings and conclusions, the Board determines that the preponderance of the evidence establishes that the International Union of Mine, Mill and Smelter Workers is a Communist-infiltrated organization within the meaning of the Subversive Activities Control Act of 1950, as amended. An appropriate order accompanies this Report.

By the Board (Chairman Lee not participating in this Report).

FRANCIS A. CHERRY, Member
 THOMAS J. DONEGAN, Member
 JAMES R. DUNCAN, Member
 EDWARD C. SWEENEY, Member
Subversive Activities Control Board

[SEAL]

May 4, 1962
 Washington, D. C.

1

SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 116-56

ROBERT F. KENNEDY, Attorney General
of the United States, *Petitioner*

v.

INTERNATIONAL UNION OF MINE, MILL AND
WORKERS, *Respondent*

PRELIMINARY STATEMENT

A. THE PROCEEDING

1. This is a proceeding on petition of the Attorney General of the United States for an order of the Board determining that the International Union of Mine, Mill and Smelter Workers (sometimes referred to herein as "Mine-Mill" or "the Union") is a "Communist-infiltrated organization" within section 3 of the Subversive Activities Control Act of 1950, as amended by the Communist Control Act of 1954.

2. The petition, filed July 28, 1955, a copy of which was duly served upon respondent, alleged that the effective management of respondent is dominated and controlled by persons who are members of Communist organizations, and that respondent has been used as a means of giving aid and support to Communist organizations, foreign Communist governments, and the world Communist movement. A number of facts and circumstances evidencing this were alleged, including those involving relationship of the Union with the Communist Party of the United States, which the petition alleged to be a "Communist-action organization."

3. After a requested extension of time was granted in part by the Board, respondent, on September 16, 1955, filed

a number of motions addressed to the petition. Oral argument was heard by the Board and the motions were denied, with one qualification, in a memorandum opinion issued by the Board on December 9, 1955. Respondent filed its answer to the petition on January 23, 1956, denying that it was a Communist-infiltrated organization and setting forth various affirmative defenses including asserted unconstitutionality of the proceeding.

2 4. The start of the hearings was delayed because of an annual convention of respondent which required the presence of its officials and attorney, and was then further delayed while the Board reconsidered, pursuant to remand by the Supreme Court, an earlier proceeding involving the Communist Party of the United States.¹ Hearings for the purpose of taking evidence commenced on February 25, 1957. A subsequent remand of the Communist Party case, that time by the United States Court of Appeals for the District of Columbia Circuit, requiring additional proceedings and another reconsideration by the Board, resulted in suspension of hearings from January 9, 1958, until February 13, 1959. Hearings were also suspended for substantial periods by reason of a Federal criminal trial of certain officers of respondent and by reason of matters in connection with the production to respondent of reports made by petitioner's witnesses to the Federal Bureau of Investigation.

5. Petitioner's case in chief consisted of the oral testimony of 19 witnesses and 82 exhibits.² Four of petitioner's

¹ The Supreme Court on April 30, 1956, remanded the Communist Party case to the Board for further proceedings (351 U.S. 115). Respondent on May 3, 1956, moved to dismiss the instant proceeding asserting lack of legal foundation in view of the remand of the Party case. The motion was denied by order of the Board issued July 31, 1956.

² The 19 witnesses do not include six whose testimony, and exhibits, were subsequently stricken. A total of 124 exhibits were identified by petitioner. Of the 82 that became part of the evidentiary record, some involve many separate documents.

nineteen witnesses had been members of both Mine-Mill and of the Communist Party of the United States, ten others had been members of Mine-Mill but not of the Party, and the remaining five of the nineteen had been members of the Party but not of Mine-Mill. Of the total of fourteen Mine-Mill members, seven had been members as late as 1951 or longer, two of the seven up to the time of testifying, one until 1955, and one until 1954.

6. Four of petitioner's witnesses who had been members of the Party but not of Mine-Mill and one who had been a member of both, were serving as informants for the F.B.I. The reports of the F.B.I. of relevant information previously furnished by these four informant-witnesses were made available to respondent for impeachment purposes, as were the reports of information furnished by three other witnesses. Reports of certain other witnesses were not produced. A separate subsection, below, is devoted to the issues that arose in connection with respondent's requests for the production of F.B.I. reports.

3 7. Respondent presented the oral testimony of 125 witnesses and identified some 204 exhibits of which 167 remain part of the record. Most of respondent's witnesses had been members and officers of local unions affiliated with the International organization. Nine had been International officers or staff members. The testimony of the "rank and file" members was received over petitioner's objections that it was immaterial and irrelevant to the issues. The weight to be given this testimony and the significance of it, if any, are, however, other matters to be resolved at the appropriate places in the findings of fact, *infra*.

8. When petitioner rested his case in chief on June 29, 1960, (Tr. 5393) respondent moved to dismiss the petition on a number of grounds, the principal one being that petitioner had not made a prima facie case. Oral argument on the various grounds was heard on August 11, 1960. (Tr. 5425-5506)

9. The grounds preliminary to the contention that petitioner had not made a prima facie case were: (1) that petitioner's witnesses gave false testimony to the knowledge of petitioner; (2) that petitioner suppressed evidence favorable to respondent; (3) that the record was tainted by the testimony of perjurious witnesses Duran, Gardner, Hartle, and Kent (respondent moved in the alternative on this ground to strike the testimony of these witnesses); (4) that respondent was denied a fair hearing by the granting of petitioner's motions to strike the testimony of six witnesses whose F.B.I. reports petitioner declined to produce¹ (respondent moved in the alternative on this ground for a declaration of a mistrial); and (5) that local unions of respondent were indispensable parties but had not been joined. The first four of these five preliminary grounds were considered and denied, for the reasons therein set forth, in a written ruling issued by the Hearing-Member on July 13, 1960. This ruling also denied an additional motion of respondent to strike all testimony and other evidence presented by petitioner which was not within the three year period enacted as part of section 3(4A) and 13(A)(e)(1) through (5) and (7) of the Act, as amended.

10. The contention that the petition should be dismissed for failure to join the local unions as parties was not argued by counsel for respondent who stated that he assumed it was governed by Board precedent in *Attorney General v. United Electrical, Radio and Machine Workers of America*. This ground was denied at the hearing. (Tr. 5506)

11. The motion to dismiss for failure of petitioner to make a prima facie case was denied in a written ruling issued September 1, 1960, as were two subsequent motions, namely, a renewed motion to strike the testimony of petitioner's witness Duran, and a motion to strike the testimony of petitioner's witness Hartle.

¹ See *infra*.

12. The presentation of respondent's case in chief was concluded on March 10, 1961. (Tr. 9688) Petitioner then put in evidence certain exhibits as rebuttal and the hearing was recessed at the request of counsel for both sides to permit their consideration of further rebuttal and surrebuttal evidence. As the result of subsequent correspondence, petitioner withdrew the rebuttal exhibits that had been introduced on March 10, 1961, and, by a telegram dated April 7, 1961, respondent advised that no surrebuttal would be offered.

13. Proposed findings of fact and conclusions were filed by both sides on May 19, 1961. At a hearing held on May 23, 1961, both sides waived summation argument and the proceeding was submitted on the record and the proposed findings and conclusions. (Tr. 9717-9718) Thereafter, a stipulation entered into between counsel for both sides on June 21, 1961, was filed and made a part of the record. See transcript pages 9722-9725, dated June 28, 1961.

B. PRODUCTION OF PRIOR STATEMENTS

14. A number of petitioner's witnesses who appeared during the period from February to June 1957, were excused after direct and cross-examination but subject to recall for further cross-examination if production to respondent was ordered of the witnesses' prior reports to the Federal Bureau of Investigation. (e.g., Tr. 1369, 1698) At the time, the case of *Jencks v. United States*, involving a related question on production of documents, was pending in the Supreme Court. *Jencks* was decided on June 3, 1957, with the Court holding that the defense in a Federal criminal prosecution was entitled, under certain circumstances, to obtain, for impeachment purposes, statements which had been made to government agents by government witnesses (353 U.S. 657).

15. On June 25, 1957, respondent filed a motion that petitioner be ordered to produce, for inspection by respondent

with a view to use on further cross-examination, all written statements made to the F.B.I. by the witness George Knott, and all documents based on the witness' oral statements to the F.B.I. in possession of petitioner, touching the subject matter about which the witness testified. Basically similar motions were filed on July 9, 1957, with regard to the witnesses Ralph Rasmussen and Kenneth Eckert. At the hearing on July 12, 1957, respondent moved that further hearings be suspended until ruling could be made on these motions and on additional, similar ones that were to be filed.

(Tr. 4141, 4256) On July 23, 1957, respondent filed
5 such motions with regard to the witnesses Harold Kent, Warren Horie, Leo Ortiz, Charles Dirdak, Ralph Locke, Jr., James Petersen, Edward Bush, Ernest Everingham, George Kirby, Elwood Hain, Bellarmino Duran, Arthur Moralez, and Rowena Paumi.

16. Oral argument on the motions for production of documents was held on July 30, 1957, and on agreement of the parties (Tr. 4253-4254) the hearing was recessed until further notice in view of the then pending decision by the Court of Appeals for the District of Columbia in *Communist Party of the United States v. Subversive Activities Control Board*, in which the Court, on January 9, 1958, decided that the principles of the Supreme Court decision in *Jencks (supra)* are applicable to proceedings before this Board. (254 F.2d 314). In an unreported order of April 11, 1958, in the same case, construed by an order of June 16, 1958, the Court held in effect that the types of documents subject to production in Board proceedings are as defined in section 3500 of the Criminal Code, 18 U.S.C., enacted September 2, 1957.

17. After an extended continuation of the recess necessitated by the fact that the January 9, 1958, decision of the Court of Appeals remanded the *Communist Party* case to the Board for further proceedings,¹ the hearing resumed

¹ See *supra*.

with a conference on February 13, 1959, (Tr. 4256-4268) and additional argument on the motions to produce on February 19, 1959. (Tr. 4269-4368) At the argument it appeared that counsel had misconceptions as to prior Board rulings on the nature and type of documents that are subject to production for use in cross-examination. As a result, the Hearing-Member by memorandum dated March 9, 1959, certified five questions for Board ruling.

18. The Board's memorandum ruling was issued March 23, 1959, stating that only "primary" documents as defined in this record at transcript pages 4279-4281 are subject to production; that the ultimate determination is to be made by the trier as to whether a document is a "statement" within the terms of 18 U.S.C. 3500 (e); that resolution of whether respondent's motions as amended orally (see tr. 4334-4336) were sufficiently specific was left to the discretion of the Hearing-Member in the circumstances of this record; that any order of production should be limited to documents in possession of the Department of Justice and not permit a government-wide search for documents where no foundation had been laid as to their existence; and, that in the absence of some extraordinary showing there should be accepted an unequivocal representation from counsel for petitioner that there is not in the possession of petitioner a specifically described document.

6 19. There followed various conferences, memoranda, and rulings that resulted, substantially by agreement, in the procedure whereby any documents containing relevant information (or information of doubtful relevancy) furnished by the witnesses to government agents but which petitioner did not consider to be "statements" as defined in 18 U.S.C. 3500 (e), or which also contained irrelevant material, would be submitted to the Hearing-Member, with accompanying memoranda setting forth petitioner's views, for *in camera* determination and excision of irrelevant portions; this to be done before any conceded

"statements" were turned over directly to respondent. (See, tr. 4375; 4378-79; Memorandum of the Hearing-Member dated May 27, 1959; Petitioner's "Memorandum Re Production of Documents," filed June 11, 1959; Respondent's "Memorandum Re Production of Documents," filed June 19, 1959; Petitioner's Request for Return of Documents, filed June 26, 1959; Respondent's Opposition, filed July 2, 1959; and Ruling of Hearing-Member, issued July 9, 1959.) It was understood and agreed that there were to be included in the production procedure any relevant documents reflecting information furnished by the witnesses to government attorneys (as well as to F.B.I. agents).

20. As part of the procedure adopted, it was agreed that petitioner would furnish to respondent schedules of payments made by the F.B.I. to certain witnesses. (Tr. 4376) Upon stipulation of counsel (Tr. 4638) an order, dated April 20, 1960, was signed restricting respondent's use of all documents produced pursuant to 18 U.S.C. 3500. A motion by respondent that petitioner produce copies of any testimony given before any Federal Grand Jury by any of petitioner's witnesses in this proceeding (Tr. 4830) was denied. (Tr. 4518)

21. Respondent's first motions for production of documents ran to 16 witnesses (*supra*). Of these, petitioner, on the dates set forth in parentheses, submitted for *in camera* examination documents, with accompanying memoranda, on 14 witnesses as follows: Hain (July 14, 1959), Everingham (July 14, 1959), Dirdak (July 14, 1959), Kent (July 17, 1959, August 14, 1959, and April 26, 1960), Kirby (July 17, 1959), Bush (July 17, 1959), Locke (August 4, 1959), Petersen (August 4, 1959), Eckert (August 7, 1959, and August 14, 1959), Paumi (August 7, 1959, and August 14, 1959 (Tr. 4593)), Horie (August 7, 1959), Rasmussen (August 14, 1959), Moralez (August 14, 1959), and Duran (April 18, 1960). (Tr. 4596-4605, 4608)

22. In most instances, petitioner took the position in his memoranda accompanying the documents submitted for *in*

camera examination that the documents were not statements as defined in 18 U.S.C. 3500(e) and thus not producible. The Hearing-Member, in a notice setting a date for a hearing in connection with the production of the documents, stated the need for additional information concerning the basis for petitioner's position (Memorandum of July 17, 1959).

7 23. The subsequent developments resulted in four different approaches that were taken by petitioner to the production of the documents. These and the ensuing motions taken by respondent, will now be treated separately.

24. With respect to six of the witnesses petitioner submitted affidavits of the government agents who had interviewed them, concerning the manner in which the interviews were conducted and the agents' reports written. These were in support of the contention that the documents submitted for *in camera* examination were not "statements" so as to be producible, and petitioner had no other documents that were statements of the witnesses on the subject matter of their testimony. A copy of the affidavits was given counsel for respondent who was heard thereon. Over respondent's objections the affidavits were considered and on the basis of examination of the documents and the affidavits it was determined and ruled that the documents did not constitute the type that respondent was entitled to use in cross-examination.¹ Respondent's motions to call the agents who had interviewed the witnesses and executed the affidavits were denied (e.g., Tr. 4513-4589). The documents and affidavits were made a part of the record, sealed, as Board exhibits. The witnesses and pertinent record refer-

¹ Respondent, on February 2, 1961, filed a motion, based upon the decision issued January 23, 1961, by the Supreme Court of the United States in *Campbell v. United States* (365 U.S. 85) seeking reconsideration of the receipt of the affidavits and seeking that the agents be called. The motion also attacked the fact that no documents had been submitted by petitioner which reflected information furnished by the witnesses to government attorneys. The motion was denied in a memorandum ruling issued February 15, 1961.

ences are as follows: Everingham, Dirdak, Kirby, Hain, Bush, and Rasmussen; tr. 4429-4444, 4516-4524, 4590-4591; Board Exhibits 1, 2, 3, 4, 5 and 6.

25. As to four of the witnesses petitioner waived the standards of section 3500 where possibly applicable and agreed that after the excision of irrelevant material the government memoranda of interviews and written statements of the witnesses be turned over to counsel for respondent for purposes of cross-examination. These were the witnesses Kent, Morales, Duran and Paumi. (see Tr. 4543-4544; 4567-4571; 4589-4605) Paumi, Kent and Duran were subsequently recalled and cross-examined in the light of the documents. Respondent did not desire the recall of Morales for additional cross-examination and the Morales documents were returned to petitioner. (Tr. 4765) The Paumi, Kent and Duran documents, including the portions made available to respondent and the portions not made available because of being irrelevant have been made a part of the record, sealed, as Board Exhibits 7, 8 and 9, respectively, in some instances specific portions of the documents were offered and received in evidence as respondent's exhibits. Credibility issues raised as a result of the additional cross-examination on the documents have been considered and discussion where warranted appears at the appropriate places herein.

26. A third approach taken by petitioner with regard to the motions for production of documents ultimately involved six witnesses—Locke, Petersen, Eckert, Horie, Knott and Ortiz. As to these witnesses petitioner exercised the election referred to in 18 U.S.C. 3500, declined to produce the witnesses' reports, and moved that the testimony of the witnesses and the exhibits put in through them be stricken. (Tr. 4546-4547, 4563-4566, 4631, 5194) Respondent opposed this and made a series of alternate motions. (Tr. 4547-4562) Petitioner's motions to strike the testimony and exhibits were granted, respondent's motion for dismissal of the proceeding upon declaration of a mistrial was denied; an al-

ternative motion was also denied to require the production of the witnesses' reports for *in camera* inspection and declaration of a mistrial if contradictions or inconsistencies appeared; and, a further alternative was denied to require the production of the reports for the purpose of sealing and attaching to the record for court review.

27. Before moving to strike the testimony of Eckert, petitioner stated that the only reports of the witness in petitioner's possession related to but one of the many areas or matters to which the witness testified, and petitioner first moved that the testimony in that area be stricken and the rest of his testimony remain in the record. (Tr. 4612-4613) This was argued extensively (Tr. 4613-4634) and a written memorandum was filed by petitioner on May 20, 1960, to which respondent replied orally (Tr. 5150-5155).¹ The motion to strike only the parts of the testimony to which the reports were relevant was denied. (Tr. 5193, 5227-5234)

28. The Hearing-Member in reviewing the record and making his findings of fact and conclusions has completely disregarded the testimony and exhibits of the six witnesses whose testimony was stricken and has in no way or manner been influenced from having heard the witnesses testify.

29. The final approach taken by petitioner in the matter of the production of documents concerned the last three of his witnesses, who testified for the first time after much of the foregoing had taken place. As to these—Gardner, Fikes and Hartle—petitioner produced before cross-examination written statements and the F.B.I. reports of interviews with the witnesses and, after the excision of irrelevant material, the documents were made available to respondent for use in cross-examination. The excised and unexcised portions of these documents were made a part of the

¹ The stated reasons for not producing the Eckert statements were that the witness justifiably in the view of counsel for petitioner refused to make any additional appearances, and if compelled to appear would refuse to testify. A copy of the statement involved was attached to the memorandum and is, therefore, part of the official file.

record, sealed, as Board Exhibits 10, 11, and 12, respectively. (see Tr. 4860-4862, 4987-4988, 4995-4996, 5070-5072; 5315-5319, 5323-5337)

30. Summarized, there were 19 witnesses for petitioner where the question arose as to the production of prior statements made by them to government agents on subject matters of their testimony. As to seven of the witnesses—Duran, Fikes, Gardner, Hartle, Kent, Paumi and Morales—the relevant prior reports were made available to respondent for impeachment purposes. With respect to six of the witnesses—Bush, Dirdak, Everingham, Hain, Kirby, and Rasmussen—the reports were determined not to meet the requirements of 18 U.S.C. 3500 and were not made available to respondent. The testimony and exhibits of the remaining six witnesses involved—Eckert, Horie, Knott, Locke, Ortiz and Petersen—were stricken upon petitioner's election that the reports not be made available to respondent.

C. CREDIBILITY CONSIDERATIONS

31. Issues were raised by respondent going to the overall or general credibility of many of petitioner's witnesses. With respect to some of the witnesses it was shown that after their connections with Mine-Mill had ended they became members of rival unions that had engaged in campaigns to win over the Mine-Mill employees in particular areas to the rival unions.¹ Some of petitioner's witnesses had testified about Mine-Mill or persons in Mine-Mill before they appeared in this proceeding.²

32. As indicated *supra*, some of petitioner's witnesses had been paid informants for the Federal Bureau of Investigation.³ In certain instances they were cross-examined on

¹ These included: Everingham, Gardner, Hain, Henderson, Kirby, and Rasmussen.

² These included: Duran, Gardner, Hartle, Paumi, and Rasmussen.

³ Paumi, Kent, Duran, Morales, and Fikes.

alleged inconsistencies between reports of information they had given to the F.B.I. or in other proceedings and their testimony in this proceeding on the same subject matters.*

33. Gardner and Hartle were cross-examined, subject to reasonable restrictions imposed by the Hearing-Member, on marital and other personal matters. Two witnesses were called by respondent who gave testimony different from that of Gardner on certain subjects about which
10 Gardner had testified. The conflicts in this testimony are resolved *infra*. The overall credibility of Hartle was considered and ruled upon in a memorandum of the Hearing-Member issued September 1, 1960, denying respondent's motion to strike her testimony. (The memorandum also denied respondent's motion to strike the testimony of Duran.)

34. Respondent's rank and file witnesses seemed to testify to the limited matters on which they were called with sincerity as they viewed the matters or understood them to be. Some of these witnesses, as well as the witnesses Stern and Salvas showed an obvious interest in the proceeding, and Salvas on cross-examination often said he was unable to remember the facts called for by the questions.

35. The witnesses for both sides were observed with care as to their demeanor and outward appearances. All of the various credibility considerations have been considered. It is found that the record does not warrant adverse overall credibility findings as to any of the witnesses.

FINDINGS OF FACT

A. ORGANIZATION AND STRUCTURE OF THE UNION

36. The International Union of Mine, Mill and Smelter Workers, respondent, is a labor organization in the United States, with headquarters at Denver, Colorado. (Answer, p. 2; A.G. Ex. 111; Tr. 4892) The Union was founded at Butte,

* Particularly Paumi, Kent, Duran, and Hartle.

Montana, on May 15, 1893, under the name Western Federation of Miners and continued under that name until December of 1916, at which time its name was changed to its present one. From the date of its origin until 1938 it was affiliated with the American Federation of Labor, and from 1938 until February 1950, it was affiliated with the Congress of Industrial Organizations as a participating member. In February of 1950, the Union was expelled from the CIO and since its expulsion the Union has not been an affiliate of any national federation or other labor organization whose policies and activities have been directed to opposing Communist organizations, Communist foreign governments and the world Communist movement. (Answer, p. 2)

37. The jurisdiction of Mine-Mill under its constitution extends to all mining operations except coal, plus the processing of ore, chemical and reduction plants, casting and allied industries. (Stern, Tr. 6576) In practice, however, the Union's chief concentrations are in nonferrous metals, particularly copper, lead and zinc, and its effective jurisdiction is over mining, milling, smelting and refining these ores.¹ (id)

11 38. The International Union is a central body and grants charters to local unions which consist of subordinate bodies or groups of persons working in one or more mines, mills, smelters or related enterprises. (MM Ex. 133 & 134) Only the International Union, not the locals, is the respondent in this proceeding. For purposes of administration and organization, the Union has set up seven geographical districts within the United States as follows: (States in the respective areas which are not listed are theoretically covered but did not have Union membership at the time of the hearing.) (Stern, Tr. 6880-81)

¹ Theoretically, Mine-Mill has jurisdiction over bauxite and uranium but no properties in these metals have as yet been organized in the United States. (Stern, Tr. 6588)

- District 1—Montana, Wyoming, and Colorado;
- District 2—Utah, Nevada, Arizona, New Mexico, and Texas;
- District 3—Illinois, Ohio and Indiana;
- District 4—Missouri, Kansas, Oklahoma, and Arkansas;
- District 5—Alabama, Georgia, North Carolina, Mississippi, South Carolina, and Tennessee;
- District 6—New Jersey, Connecticut, West Virginia, New York, and Pennsylvania;
- District 7—Washington, Oregon, Idaho and California.

Prior to 1955, there was an eighth district located in Canada but since then the Canadian locals have been autonomous. (Stern, Tr. 6882-83; MM Ex. 127, pgs. 173-193) For some five years prior to 1948 there had also been a separate division called the Die Casting Division composed of locals in the die casting industry but the division was dissolved and the locals put into the geographical district in which they worked. (Stern, Tr. 6884-87) At around the time of the hearing, District 2 had the largest membership, and District 6 the next largest. At one time District 1 had one of the largest memberships. (Stern, Tr. 6888-89)

39. Once each year the local unions elect delegates who, together with the officers of the International Union, meet in annual convention. (MM Ex. 133) Between conventions the affairs of the Union are directed by the International Executive Board composed of the president, two vice presidents,¹ a secretary-treasurer, and a board member for each

¹ Up to and including the year 1946 there was only one vice president. Commencing in 1947 there were two vice presidents, designated respectively as Eastern and Western Vice Presidents. (Stern, Tr. 6894-96; AG, Ex. 108)

of the seven geographical districts. (Rasmussen, Tr. 133-35; Stern, Tr. 6879-87; MM Ex. 127, pp. 217 & 316; MM Ex. 133, pp. 10-11; Tr. 5449-51) ² The officers and board members are nominated at the appropriate conventions and thereafter elected by referendum vote of the entire membership for terms of two years. (Resp. Finding No. 10; MM Ex. 133, p. 10ff) Vacancies occurring between elections are filled by appointment by the International Executive Board. (MM Ex. 133; Stern, Tr. 6894-6906)

12 40. In addition to the International officers, the Union has various staff members and other employees. (MM Ex. 156) The staff includes regional directors, International representatives, research director, educational director (between 1947 and 1952), and editor of the official organ. (AG Ex. 109-113; Stern, Tr. 6906-08) The staff members are appointed by the International President subject to the approval of the International Executive Board. (Stern, Tr. 6906-07) Chairmen of the convention committees are named by the International President and the members of the committees are appointed by the International Board, usually from a list of proposed committeemen submitted by each board member. (Stern, Tr. 6770)

41. The International representatives, as the name implies, represent the International Union in contacts and deal with the local unions; they carry out organizing activities and serve the locals by such as helping with contract negotiations and grievances. (Henderson, Tr. 2828; MM Ex. 133)

42. The International Union publishes and disseminates as its official organ a periodical known as the "Mine-Mill Union." (Answer, p. 3)

43. The Union has been and is a representative of employees within the meaning and for the purposes of section 7 of the National Labor Relations Act, as amended, and

² Because of insufficient members to warrant it, there has not been a board member from District 4 since the mid-1950's. (Stern, Tr. 6888)

serves as the exclusive collective bargaining representative of employees under section 9 of that Act. (Answer, p. 3)

B. COMMUNISTS IN THE LEADERSHIP OF RESPONDENT

44. (a) The statutory definition of a Communist-infiltrated organization requires the consideration, among others, of whether the organization:

. . . is substantially directed, dominated, or controlled by an individual or individuals who are, or who within three years have been actively engaged in, giving aid or support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title, . . .

(b) Section 13 (A)(e)(1) prescribes that in determining whether any organization is a Communist-infiltrated organization, the Board shall consider:

13 . . . to what extent, if any, the effective management of the affairs of such organization is conducted by one or more individuals who are, or within three years have been, (A) members, agents, or representatives of any Communist organization, and Communist foreign government, or the world Communist movement referred to in section 2 of this title, with knowledge of the nature and purpose thereof, or (B) engaged in giving aid or support to any such organization, government, or movement with such knowledge of the nature and purpose thereof;

(c) As applied to this proceeding by the Attorney General's petition and the evidence presented by counsel for the Attorney General the issue framed by the aforementioned statutory provisions becomes whether respondent "is substantially directed, dominated, or controlled by an indi-

vidual or individuals who are, or who within three years have been actively engaged in, giving aid or support to" the Communist Party of the United States (hereinafter sometimes referred to for convenience as "the Communist Party" or merely "the Party").¹

45. The entire record established, and as appears from the facts set forth herein, respondent has been and is substantially directed, dominated, or controlled by the individuals who constitute the International Executive Board, assisted by the staff members.²

46. Petitioner presented evidence to show that a number of respondent's officers, board members and staff personnel were members of the Communist Party of the United States, and that certain others were connected or affiliated with the Party. None of the individuals so identified appeared to deny the evidence about them. No showing was made that they were unavailable and no explanations were given of their not testifying. Except for the testimony considered below, the evidence was not otherwise contradicted or rebutted.

14 47. As is considered more fully in subsequent sections hereof, respondent advanced the contention to the effect that charges of Communism have been made against the Union and its leadership in a sinister fashion by

¹ The Communist Party of the United States is a "Communist-action organization" as that term is used in the definition quoted in subparagraph (a), above (see *infra*). With respect to the provision in the evidentiary consideration of section 13(A)(e)(1), as applied to this proceeding, that the individuals involved have acted "with knowledge of the nature and purpose" of the Communist Party, the undenied facts as to their statements, declarations, and conduct, as are set forth *passim*, require the conclusion that their Communist orientations could not have existed with innocence of the nature and purposes thereof.

² Counsel for respondent acknowledged that at least between conventions the direction and management has been vested in and exercised by the International Executive Board (see, e.g., tr. 5449-5450). These individuals—the executive board, assisted by the staff members—also constitute the "effective management" for purposes of the evidentiary consideration of section 13(A)(e)(1).

employers, rival unions, and disgruntled members of respondent in efforts to disrupt and wreck the Union.¹ Moreover, in every case, except that of Maurice Travis, where the witnesses for respondent knew one or more of the persons described by any of the petitioner's witnesses as members of the Communist Party, the witness for respondent testified that no such person ever told him, the witness, that he was a member of the Communist Party or ever asked the witness to join the Communist Party. Where there was otherwise undenied and uncontradicted evidence showing an individual to be connected or affiliated with the Communist Party, it is not overcome by this type of attempted rebuttal.

48. As will appear, most of the individuals who were members of the International Executive Board at the time of the filing of the Attorney General's petition (July 28, 1955) had held leadership positions in the Union for a number of years prior thereto and continued to hold leadership positions for those years thereafter which were covered by the evidence—generally up to 1959-1960. In addition, evidence was presented on the declarations and conduct of former functionaries while they held their positions in respondent, and of other events and occurrences predating and postdating the time of the filing of the petition.

49. Counsel for respondent moved at the close of petitioner's case to strike all evidence "relating to Communist Party membership of individuals or Communist activities and so forth prior to July 28, 1952," (tr. 5400) on the ground that such evidence was made irrelevant by the three year limitation period in the definition and evidentiary consideration sections of the statute (see tr. 5398-5406). Counsel also moved to strike "the evidence which post-dates the petition, unless you are willing to take the alternative that all evidence which is more than three years stale by the time at

¹ Respondent has consistently characterized charges of Communism as "Red Baiting" (see *infra*).

least of your preliminary report is out of date." (Tr. 5408.)² The motion was denied in a written ruling dated July 13, 1960 (*supra*).

15 50. The International Executive Board at the time of the filing of the Attorney General's petition and thereafter has consisted of 11 members (*infra*), (see also, e.g., M.M. Exs. 127 and 128). Six of the individuals who were members of the Board at the time of the filing of the petition, each of whom held office for varying numbers of years both before and after that time, were shown to have been members of the Communist Party or affiliated with the Party. Evidence of Communist Party membership was also presented as to two other individuals who had been members of the board for a number of years ending shortly before the time of the filing of the petition and who played important roles in shaping the current nature or status and characteristics of the organization. The evidence as to the Communist orientation of each of these eight will now be set forth.³

51. *Raymond Dennis—Board Member from 1950 and still in office in 1960*

(a) Petitioner's witness Gardner, then a member of the Communist Party, was employed in September of 1951 to become an International representative of respondent. (Tr. 4863-64) He was employed by Raymond Dennis who was

² Counsel raised the question of "Where does the three-year period begin, or looked at from another point, where does it end." (Tr. 5399.) Counsel then stated that, "For purposes of argument, I am first going to be taking the position, which I think is probably the correct position, that the three-year period is the three years prior to the date of the filing of the petition." (Tr. 5399.) The Hearing-Member agrees with that position. However, under the circumstances pertaining to this respondent, including, among others, the continuity in office for many years of the top leaders, and while much of the evidence fell within that period of three years, questions as to the meaning of the three year provisions are not of substantial importance.

³ The membership of the Executive Board at the time of the hearing and pertinent facts as to vicissitudes on the Board will be considered later.

Board Member of District 3. (Tr. 4864) Prior to accepting the position, Gardner had been visited by one Sam Reed who was the Communist Party organizer for the Communist Party branches within the Mine-Mill Union, the United Electrical Workers Union, and the Longshoreman's Union. (Tr. 4866-67; 4892) Reed told Gardner that there was a vacancy as Mine-Mill International representative in the Cleveland area and that if Gardner accepted the position it would be "a wonderful opportunity for me [Gardner] to re-establish my Communist Party activities." (Tr. 4868.) Reed also told Gardner that if he accepted the job as Mine-Mill International representative he would be expected to assist the Civil Rights Congress and the Committee for Protection of Foreign Born. (Tr. 4868)

(b) After being contacted by Sam Reed, Gardner was visited around mid-August of 1951, by Reed and Raymond Dennis together. (Tr. 4865) Dennis too told Gardner that as Mine-Mill organizer he would be expected to carry on some work with the Civil Rights Congress and the Committee for Protection of Foreign Born, "or any other organizations that the Communist Party might at that time be interested in." (Tr. 4865.) Dennis reminded Gardner that he was sure that Sam Reed had previously outlined in greater detail what Gardner would be expected to do regarding the Civil Rights Congress "and the other organizations of the party." (Tr. 4866.)

16 (c) Gardner accepted the positions and worked out of District 3 office of Mine-Mill in Cleveland, Ohio. (Tr. 4869) A few months after he went to work, Gardner noticed in the files of that office a letter of Raymond Dennis' resignation from the Communist Party. (Tr. 4869-4870) This was in December of 1951 or January of 1952. (Tr. 4870) Gardner asked Dennis if he thought it was wise to let a letter of that sort remain in the files of the Union. Dennis replied that he could see nothing wrong with it because this letter was one that was sent out by all trade union officials who were members of the Communist Party at the time they

signed a non-Communist affidavit under the Taft-Hartley Act, and was merely a protection that they had against any possible prosecution for membership at the time of signing. (Tr. 4871)

(d) While still in the Cleveland area, Gardner told Raymond Dennis that he had met with one Andrew Reams, an underground leader of the Communist Party, and Reams told Gardner to take up with Dennis, Gardner's working in behalf of a newly formed organization called the National Negro Labor Council. (Tr. 4875-76) Dennis advised Gardner that he was well aware of this, that he had also discussed Gardner's working with the NNLC with some of the underground Party leaders, and that he certainly wanted to emphasize the need for Gardner spending as much time as necessary to assure the success of that Council in Cleveland. (Tr. 4878)

(e) In April or May of 1952, Jesse Van Camp, then a Mine-Mill International representative, met with Gardner and told Gardner that he, Van Camp, felt he had gotten a "shoddy" deal out of Mine-Mill because at a Communist Party meeting he had agreed to surrender his position as Board Member for District 3 to Raymond Dennis, and that he had been promised that he would become regional director for District 3 but this had never taken place and he believed that Dennis was largely responsible. (Tr. 4879) A few days later, Gardner repeated this to Dennis at the Mine-Mill office. (Tr. 4883) Dennis told Gardner that he, Dennis, had also been at the Communist Party meeting where the decision for Van Camp to step down had been made, and that if Van Camp was dissatisfied he should have raised it at that Party meeting. (Tr. 4880)

(f) Around January of 1953 Gardner brought up with Dennis that Edith Lumer,¹ an employee in the Union office

¹ The transcript gives the name as "Edith Bloomer" but the Hearing-Member recalls that the witness said "Edith Lumer" and the record is hereby ordered changed to conform.

in Cleveland was quite hostile to Gardner. (Tr. 4187-89)

Dennis advised Gardner that this was a problem because Edith Lumer was the wife of a National leader of the Community Party who was then operating underground, and that the Communist Party had assigned her to the job and would be quite reluctant to remove her since she needed an obvious source of income. (Tr. 4888)

(g) Dennis is one of the Mine-Mill officials who has been active in opposing anti-Communist proposals offered at Mine-Mill conventions (see *infra*).

(h) A number of the rank and file members who appeared as witnesses for respondent testified that they knew and had Union business with Dennis, that Dennis never told them he was a member of the Communist Party, and that he never asked them to join the Party.¹ Respondent's witness Duplessis testified that about November, 1959, at a meeting of Local 758, Dennis had stated in response to questions from the floor that he never was a member of the Communist Party. (Tr. 7331-32)

52. *Irving Dichter—Board Member from 1955 until 1959 and Secretary-Treasurer 1959-60*

(a) Petitioner's witness Rowena Paumi attended in early 1942 a closed Communist Party meeting at which a number of Mine-Mill people were present including Irving Dichter. (Tr. 1482-83) The purpose of the meeting was to discuss issues coming up at meetings of Mine-Mill locals and there was also discussion about the Mine-Mill people in the Communist Party selling the Daily Worker and passing out a Daily Worker editorial that was about to be issued.

(b) In Mid-1943, Dichter told Paumi to go to one Mike Russo (a high functionary of the Party in Connecticut) to

¹ This type of testimony has been referred to *supra*. It was given, as indicated, generally as to the Mine-Mill officials who had been described by petitioner's witnesses as members of the Party and has been taken into consideration in each instance but will not hereinafter be repeated.

straighten out her confusion as to Communist Party policies, and thereafter Paumi became more active in the Party. (Tr. 1483-84) Toward the end of 1948, Paumi saw Dichter at the Communist Party headquarters talking with Mike Russo.² (Tr. 1541-42)

18 (c) Around the first part of 1953, petitioner's witness Kent attended a closed, secret meeting of the Trade Union Commission of the Communist Party in the basement of the home of Sam Richter, a member of the City Committee of the Communist Party of Bridgeport, Connecticut. (Tr. 1705) Irving Dichter was among those present. (Tr. 1705) The purpose of the meeting was to plan for getting Party members who were members of the C.I.O. elected as delegates to the coming C.I.O. convention, or to try to get people in the C.I.O. nominated as delegates who were sympathetic to the Communist cause or could be influenced by Party members. (Tr. 1707) Dichter took part in the discussions. (Tr. 1708)

(d) In 1954, Kent was summoned to New York City and met with Sid Taylor, the chairman of the Communist Party of Connecticut. (Tr. 1709-10) Taylor said the Communist Party in Connecticut was going to be reorganized and a new, concealed, State Board created to consist of Taylor as chairman and Bob Ekins, Jake Goldring, Irving Dichter and Kent. (Tr. 1710-11) Subsequently, Kent attended meetings of this concealed Party Board at which Irving Dichter was present, first at the fourth meeting held in April of 1954. (Tr. 1711-12) Dichter was also present at a subsequent meeting a few weeks later. (Tr. 1713-14) A still later meeting was held, in New York City, on May 29, 1954, but

² Paumi could not recall on cross-examination whether she reported this to the F.B.I. (tr. 4683-4684; 4693-4694). Counsel for petitioner stated that all of Paumi's reports that mentioned Dichter's Communist activities had been produced (tr. 4688, 4690). There was no report that related that she saw Dichter at the Party headquarters in 1948. This situation, however, does not justify discrediting Paumi's testimony, particularly in the absence of denial by Dichter or Russo, or of any other rebuttal.

Dichter did not attend, having first contacted Kent and told Kent that he was not well and gave Kent a report of his, Dichter's, to be given to Taylor, the Chairman of the Communist Party concealed Board. (Tr. 1714-15) Shortly after the meeting started, the F.B.I. broke in and arrested everybody, including Kent. (Tr. 1716)

(e) Petitioner's witness Gardner was visited at his home in Butte, Montana, by Irving Dichter sometime in March of 1955. (Tr. 4941) Dichter told Gardner that he, Dichter, was investigating Gardner's activities with a group that was identified with the ouster of Maurice Travis (see *infra*) and Gardner's activities in Mine-Mill. (Tr. 4941-42) Gardner told Dichter that Bob Shrank, a Mine-Mill representative, had already spent considerable time discussing these matters with him. (Tr. 4942) Dichter told Gardner that Shrank was given the assignment by the Union and would report back to the Union; that his, Dichter's, report would be far more serious because it was to go to the Rocky Mountain Region of the Communist Party and some kind of action would undoubtedly be taken on his report. (Tr. 4942) During the discussions Dichter expressed disappointment that Gardner did not seem to realize that Mine-Mill was one of the last voices of the Communist Party within the trade union movement. (Tr. 4942) It was not many weeks after this that Gardner was expelled from the Communist Party which was followed a few weeks thereafter with the termination of his employment with Mine-Mill. (Tr. 4943-44)

(f) Like Dennis (*supra*), Dichter has associated himself with the pro-Communist people in the Union (see *infra*).

19 53. *Asbury Howard—Eastern Vice President from 1954 and continuing in 1960*

(a) In the fall of 1957, petitioner's witness Fikes, then a member of the Communist Party, was sent by the Party from Alabama to Los Angeles, California. (Tr. 5069-70; 5074) Fikes contacted Harold Wildman, a Mine-Mill Inter-

national representative in the Los Angeles area at the Mine-Mill, Local 700, Union Hall. (Tr. 5070; 5072-73) Fikes told Wildman that the Communist Party people in Alabama had told him to see the Mine-Mill representative in California, and that Wildman could verify who Fikes was through Asbury Howard or "Charlie" Wilson. (Tr. 5074-75)

(b) Later, Fikes met Chase Powers, the Mine-Mill Board Member for District 7 (found *infra* to have been a Communist Party member) and discussed with Powers an organizing campaign then going on at the American Brass Company. (Tr. 5076-77) Powers told Fikes that Asbury Howard was coming to town shortly after the first of the year. (Tr. 5077-78) Fikes said he would like to see Howard and had thought about writing him a letter. (Tr. 5078) Powers told Fikes not to write a letter directly to Howard since Howard should not be getting letters from known Communists; that if Fikes wanted to write to Howard before he arrived in California to give the letter to Powers who would deliver it personally. (Tr. 5078)

(c) Around the first of the year 1958, in January or February, Fikes met with Asbury Howard at the Union Hall in Bell, California. (Tr. 5079) Fikes and Howard discussed persons both had known in the Communist Party. (Tr. 5080) Howard told Fikes that he, Howard, had been in the Party for a long time but did not have contacts with local Party people and paid his Communist Party dues to the national office of the Union in Denver. (Tr. 5080)

(d) At this meeting between Fikes and Howard at the local union hall, Fikes told Howard that Pettis Perry wanted to meet with Howard and had asked Fikes to arrange a time and place since Perry did not think it wise for Howard to go to Perry's home. (Tr. 5081) Fikes knew Pettis Perry as a member of the National Negro Commission of the Communist Party. (Tr. 5081) Pursuant to arrangements, Fikes, Perry, and Howard met at Fikes' house for three hours or longer. (Tr. 5082)

(e) Asbury Howard, at this meeting, reported to Pettis Perry on what was going on in the South and the work Howard had been doing in mass organizations, the Church, the Voter's League, and the NAACP. (Tr. 5082) Howard told Perry that it had been the Communist Party decision as far back as 1947 that Howard was not to have contacts with local Communist Party people. (Tr. 5082-83)

(f) In the summer or fall of 1953, Fikes met in Bessemer, Alabama, with Charles Wilson, then Mine-Mill Eastern Vice President. (Tr. 5089) Wilson told Fikes about a recent Communist Party meeting at which there had been discussions about Wilson stepping down as Mine-Mill vice president, and at which Wilson had said that he would be willing to step down for Asbury Howard. (Tr. 5090) Fikes again met with Wilson, this time in 1954 after Howard had become a Mine-Mill Board Member. (Tr. 5090-91) Wilson told Fikes that he had felt that his stepping down was not the best thing in the world but he had no choice. (Tr. 5092) Wilson also told Fikes that Asbury Howard and Alton Lawrence (see *infra*) had raised the question with Communist Party officials, and also with Union officials, whether Wilson was a bad security risk in that he had known Communists in his house. (Tr. 5092)

(g) Petitioner's witness Homer Wilson testified on cross-examination that Asbury Howard had told him that he, Howard, was not a Communist Party member and Wilson had believed him (Tr. 840 F) but, shortly before testifying in this proceeding, Wilson had spoken to Howard and told him that the Government people had the goods on him in that he had attended a meeting in Chicago in 1946 at which everyone present was a Party member. (Tr. 840 F, 840 G) So far as the record shows, Howard did not deny this.

(h) Respondent's witness Jesse Gaines testified that Asbury Howard, in response to a point blank question, had told him that he did not belong to the Communist Party. (Tr. 7482) The date of the question does not appear.

54. *Alton Lawrence—Board Member from 1950 until 1959*

(a) Petitioner's witness Homer Wilson became Mine-Mill Board Member for District 5 early in 1943. (Tr. 758) Shortly thereafter the secretary in the District 5 office, a Mrs. Frantz, told Wilson that she was a member of the Communist Party and suggested that Wilson meet Rob Hall, her Communist Party organizer. (Tr. 759-60) Wilson went to Birmingham to have breakfast with Hall. Alton Lawrence, then a Mine-Mill International representative, and Mrs. Frantz were also present. (Tr. 761) The conversation revolved around the Communist Party and its activities in Alabama including its organizational work within the Union. (Tr. 762)

(b) Later, Wilson had several luncheons with Hall, Mrs. Frantz, and Alton Lawrence. (Tr. 762) These three pointed out the many ways that the Party had of helping an organizer, especially a Mine-Mill organizer, because the Party had contacts throughout the International Union. (Tr. 763) Wilson thinks the primary purpose of these meetings was to recruit him into the Communist Party. (Tr. 763) Alton Lawrence told Wilson that he, Lawrence, was a member of the Communist Party. (Tr. 765)

21 (c) Alton Lawrence subsequently went into the service but returned and went back on the Mine-Mill staff in late 1945. (Tr. 765) Wilson told Lawrence and also Mike Ross when they returned that he had gotten the locals in good shape and did not want any more of the Communist Party activity to disrupt the locals like they were when Lawrence and Ross left. (Tr. 765-766) Lawrence said the war had changed his way of thinking and he didn't believe the same way he did. (Tr. 766-67) According to Wilson, Lawrence did very well for a while but then "the old boys that he had been collaborating with before got hold of him" and he started back into Communist Party activities. (Tr. 769.)

(d) Sometime in 1954, after Charles Wilson had stepped down and Asbury Howard had become Mine-Mill Eastern Vice President, Wilson and Fikes met together at Fikes' home in Bessemer, Alabama. (Tr. 5090-91) Charles Wilson, a Party member, said to Fikes, also a Party member, that he felt Asbury Howard was a stooge of Alton Lawrence and he didn't trust Lawrence but as long as Lawrence was in the Communist Party he would defend him. (Tr. 5091)

55. *Albert Pezzati—Board Member 1947-1954—Secretary-Treasurer 1955-1959*

(a) In 1954, while on Union business in Butte, Montana, petitioner's witness Gardner and Albert Pezzati roomed together at a motel. (Tr. 4920-21) The two discussed the signing of the non-Communist affidavits under the Taft-Hartley Act and Pezzati remarked that he thought the Communist Party was wrong in waiting so long before permitting Party members in the leadership of unions to sign. (Tr. 4921-22)

(b) Gardner and Pezzati also discussed Chase Powers, the Mine-Mill Board Member for District 7. (Tr. 4922) Pezzati explained to Gardner the possibility of redistricting the Union in a manner that would cut into Chase Powers' district. (Tr. 4923) Pezzati said that he felt the Communist Party was correct in attempting to protect Chase Powers' position. (Tr. 4923) Pezzati, continuing, said that Powers had been the "warhorse" of the Communist Party within the leadership of Mine-Mill, and was to a very large extent responsible at one time for reestablishing the Party in the leadership of the International Union. (Tr. 4923.)

(c) Petitioner's witness Moriarity testified that Pezzati was a political appointee (around 1946) of then Mine-Mill President Reid Robinson as an International representative and the membership in Connecticut accepted him reluctantly. (Tr. 2425-26) At the time of the 1946 convention, Pezzati tried to win over Moriarity to the pro-Robinson side (see *infra*).

22 (d) At a Mine-Mill Board meeting in Denver in February of 1955, Pezzati was appointed to fill Travis' place as secretary-treasurer after Travis had proposed him as the man who most nearly reflected Travis' views. (Gardner, Tr. 4936; M.M. Ex. 117, p. 3)

(e) Although it was apparently erroneously left out of the stenographic transcript, counsel for both sides agreed that on direct examination petitioner's witness Moralez answered "Yes" to a question "Was Al Pezzati a Member of the Communist Party?" (See tr. 3936-3938.) Later in direct examination, Moralez testified to the effect that he based his identification of Pezzati upon having heard him discussed at Communist Party meetings. (Tr. 3667) Moralez knew Pezzati personally. (Tr. 3460) On cross-examination, it developed that in 1956, Moralez testified before a Grand Jury in Denver that he knew Pezzati as a Communist Party member. (Tr. 4033)

56. *Chase Powers—Board Member 1943 and continuing in 1960*

(a) Petitioner's witness Barbara Hartle, at the time a functionary in the Communist Party on the West Coast, knew Chase Powers as a Communist Party member in 1941 and 1942, and collected Party dues from him. (Tr. 5271-72) Hartle met with Powers and Harlow Wildman (a Mine-Mill International representative) and discussed with them Mine-Mill affairs and the Communist Party line in it. (Tr. 5320)

(b) In 1943, Powers told Homer Wilson that he was a member of the Communist Party and discussed the Party's activities within Mine-Mill International. (Tr. 771-777)

(c) In 1953, petitioner's witness Gardner, then a Party member working as a Mine-Mill International representative (*supra*), met Chase Powers at Wallace, Idaho, and Powers told Gardner that charges had been filed in the Party against Rudy Hansen, a Mine-Mill International

representative, and that Gardner should isolate Hansen from the miners so that he could be more easily expelled from the Party. (Tr. 4897-98)

(d) Petitioner's witness Fikes met with Powers in 1958 and discussed with him Communist Party matters and Mine-Mill affairs; Powers told Fikes that the Party and Mine-Mill did not want any Party literature in the brief cases or in the motel rooms of Mine-Mill officials lest the Federal Bureau of Investigation find it there. (Tr. 5086-89)

(e) Mine-Mill official Pezzati considered Chase Powers one of the stalwarts of the Communist Party in Mine-Mill (*supra*).

23 57. *Maurice Travis—Secretary-Treasurer, 1948-1955 (February)*

(a) Petitioner's witness Homer Wilson had dealings in 1946 with Maurice Travis in connection with a secession movement of Mine-Mill locals in the State of Connecticut. (Tr. 791-792) Wilson complained to Travis that all of the International Union organizers that Travis was bringing into the area were Party men or persons who had at least been branded as Party men. (Tr. 792) Travis replied that these men had forgotten more about the class struggle than Wilson and any of the rank and file members would ever know. (Tr. 792) Travis told Wilson that the Communist Party had organized Mine-Mill in the first place; that they didn't intend to give it up; and, that either Wilson could go along with the Party or get out of Mine-Mill. (Tr. 794)

(b) The Eastern Edition of the official organ of Mine-Mill International on August 15, 1949, contained an article by Maurice Travis announcing that he had been a member of the Communist Party and had recently resigned in order to make it possible for him to sign the Taft-Hartley affidavit (A. G. Ex. 47, page 3).¹ Travis' article, however, indicated

¹ Findings on the issue within the Union over whether to comply with the non-Communist affidavit provisions of the Taft-Hartley Act are set forth *infra*.

that his resignation was merely nominal and did not represent any change in his attitude toward the Party (see below). The Travis article contained the following:

... Membership in the Communist Party has always meant to me, as a member and officer of the International Union, that I could be a better trade unionist;

... trade unions are an integral part of a Socialist society, the kind of society in which Communists believe. Therefore, I believe that good Communists are good trade unionists.

24 As a member of our International Union I have always been proud of and have drawn strength from its basic Socialist tradition. No other union in this country matches ours in its glorious working-class history. Our union, and its predecessor, the Western Federation of Miners, has carried on some of the most bitter and courageous struggles in the history of the labor movement. I have always been inspired by the fact that early leaders of this union were socialistic in one form or another, that Bill Haywood also took the road to Communism and died not only as a great leader of the working class but as an honored and respected Communist.

Therefore, I want to make it crystal clear that my belief in Communism is consistent with what I believe to be the best interests of the members of this Union and the American people generally and that I am especially happy to be able constantly to remember that it is consistent with the finest traditions of the International Union. (A.G. Ex. 47.)

(c) In the latter part of 1949, Travis made a speech before Mine-Mill Local 392 in which he said he resigned from the Communist Party with reluctance and that he would still continue to believe in the principles and the practices of the Communist Party. (Kirby, Tr. 2927-28)

(d) Petitioner's witness Kirby spoke with Travis at the 1949 Mine-Mill convention after Travis had signed the non-Communist, Taft-Hartley affidavit. Travis offered Kirby a place on the Mine-Mill Executive Board if Kirby would cease his opposition to the positions for which Travis had been working. Kirby asked Travis how he could sign the Taft-Hartley affidavit and Travis replied that all it meant was that at the moment of signing he was not a Party member. (Tr. 2932-34)

(e) In 1953, petitioner's witness Henderson heard a Mine-Mill member tell Travis he could not support him for secretary-treasurer of the Union because of his political beliefs, and heard Travis reply that: "I haven't changed my political beliefs any." (Tr. 2824-26.)

(f) In 1951, Travis told Gardner that he was very happy that Gardner had come with Mine-Mill since Gardner had come well recommended by the Communist Party. (Tr. 4881-84) In 1953 Gardner and Travis discussed the fact that key Communist Party people were involved in a factionalism dispute within Mine-Mill in Idaho. (Tr. 4895-96) Travis cautioned Gardner to remain aloof from this factionalism until such time as charges that had been filed with the Idaho State Committee of the Communist Party could have been heard and the individuals involved expelled from the Party. (Tr. 4896)

25 (g) At a Communist Party meeting which Gardner attended in 1954, he was told that a report was being written up on his part in a disputed strike settlement; that the report would be sent to the Rocky Mountain Region of the Communist Party and a copy sent to Maurice Travis. (Tr. 4915-16)

(h) In 1951 and 1953, Travis was elected International Secretary-Treasurer over petitioner's witness McLean who ran on an anti-Communist slate. (Tr. 3163-3168)

(i) Moralez attended a Communist Party meeting in 1955 at which Gardner was criticized for not supporting Travis more strongly, and a Party functionary said that the Communist Party had to do everything in its power to back Travis in Mine-Mill. (Tr. 3771-74)

58. *Charles Wilson—Board Member 1947-1950—Eastern Vice President 1951-1953*

(a) In April or May of 1953, petitioner's witness Gardner made a trip to Port Colborne, Canada, in connection with the dedication of a Mine-Mill union hall. (Tr. 4889-90) Charles Wilson was there in his capacity as Vice President of the International Union. (Tr. 4890) Wilson called Gardner off to the side and told Gardner he was having some difficulty in making contact with Communist Party leaders in his area, and he was quite unhappy about it. (Tr. 4891) He said that subsequent to his agreeing at a Party meeting to step down so that Asbury Howard could become Eastern Vice President, the Communist Party appeared to stay away from him completely and to avoid him; he asked whether Gardner thought it was because of himself or because it was just a national situation; and, he wanted to know whether Gardner was having the same problem. (Tr. 4891) Gardner assured him it was just a question of the times, that the Party functionaries were becoming more cautious and difficult to contact. (Tr. 4891)

(b) Charles Wilson also told petitioner's witness Fikes about the Communist Party meetings at which he was present and at which there were discussions of his stepping down so Asbury Howard could have the job. Wilson told Fikes that he was in the Party. In 1954, Wilson met with Fikes again and told Fikes that he, Wilson, was in difficulties with the Party which considered him a bad security risk

because he permitted known Communists to come to his home. (Tr. 5089-92)

59. The International President of Mine-Mill, John Clark, has held the office continuously since 1948. He was not shown to have been a member of or affiliated with the Communist Party. However, his declarations and actions have been such, as will appear from the following summary
 26 of the evidence, that the fact of his being president has not been inconsistent with Communist Party domination and control of the top leadership group in respondent.

(a) In 1947 there were major secession movements in the Union by members who considered the Union to be Communist controlled (see *infra*). John Clark was appointed by the Board to be acting secretary-treasurer to replace the one who had left. (Stern, Tr. 6898) Following investigation of charges of Communism in Mine-Mill, the C.I.O. made certain recommendations including that Maurice Travis be removed from International office (see *infra*). The C.I.O. recommendations were rejected by Mine-Mill International Board and instead the Board arranged for a special election of officers (see *infra*). Maurice Travis nominated John Clark for the office of president and Clark was subsequently elected. (A.G. Ex. 15, pp. 280-81; A.G. Ex. 108) Travis was elected secretary-treasurer (*infra*).

(b) In 1949, Clark asked petitioner's witness Hain for suggestions on how to keep the Union intact and prevent secessions. (Tr. 3036) Hain's first proposition was that Clark should run for president on an "anti-commie" ticket and pick a committee to run with him. (Tr. 3037.) Clark was noncommittal, merely saying that in a few weeks he would get together with Hain and talk over the situation. (Tr. 3038) The next that Hain heard from Clark was a letter dismissing him from the Mine-Mill staff. (Tr. 3038; A.G. Ex. 57) Petitioner's witness Gardner was fired in 1955 from his position on the Mine-Mill staff shortly after being ex-

pelled from the Communist Party (*infra*). On the other hand, as International President, Clark has hired as Mine-Mill staff members a number of persons who, the record shows, were members of the Communist Party (see *infra*).

(c) Maurice Travis in 1949 announced that he had been a member of the Communist Party and, although he had technically resigned in order to sign a non-Communist affidavit and thus remain an officer of the Union, he would continue his belief in and support of the Party (*supra*). Clark, in his report to the 1949 convention, paid tribute to Travis (A.G. Ex. 25, p. 249). The Clark report condemned the Government's "anti-Communist crusade" which had resulted in Travis revealing his Communist Party membership (p. 260), and Clark urged a policy of coexistence between the Soviet world and the western world rather than a victory of one over the other (p. 273).

(d) An instance evidencing Clark's support of Travis, if not dependence upon Travis, after Travis had revealed his Communist orientation was given by petitioner's witness McLean. In 1953, McLean and the officers of a Mine-Mill local in Montana met with Clark at their request in efforts to have Harlow Wildman (found *infra* to have been a member of the Communist Party) and Ernest Salvass removed from the positions of International representatives in the area. (Tr. 3168-3174) Clark's only reaction was that he would go back and discuss it with Travis. (Tr. 3172-73) Another indication of Clark's support of Travis was the fact that at the 1953 convention Clark expressed friendship for all of the officers but singled out Travis as the only one he praised by name (A.G. Ex. 59, p. 212).

(e) Petitioner's witness Rasmussen was asked on cross-examination and replied that he had testified before a United States Senate investigating committee that Clark had collaborated and worked with known members of the Communist Party. (Tr. 350)

(f) Clark has consistently in his official reports and statements as president of Mine-Mill directed the organization in opposition to the foreign policies of the United States, in opposing the Federal laws designed to preserve the national security, and in opposition to moves within the Union to bar Communists from holding positions of leadership and trust (see *infra*).

(g) The C.I.O. in 1949 amended its constitution so as to bar from the C.I.O. executive board any member of the Communist Party or persons who consistently pursued policies and activities directed toward the achievement of the program or purposes of the Communist Party (*infra*). Thereafter charges were filed against Mine-Mill President Clark and the Union itself, and the C.I.O. concluded that Mine-Mill had been consistently directed toward aiding and supporting the Communist Party (*infra*). At the Mine-Mill convention after the Union had been expelled by the C.I.O., Clark, in his president's report, pointed out with approval that the Mine-Mill Executive Board had denounced the C.I.O. constitutional amendments against Communists and likened the C.I.O. barring of Communists to "the suppression of ideas that Wall Street does not like." (M.M. Ex. 123, p. 145.)

60. William Mason was a member of the Mine-Mill Executive Board from the 1940's until 1953. At the Mine-Mill convention in 1946, Mason spoke in opposition to a proposal which would bar Communists from holding office in the Union, and stated, among other things:

I want to say something that I have not said to any meeting of any local union or anybody or mentioned before. I have been a member of the Communist party for years. Several years ago I thought in my humble way that the Communist party should have emphasized—instead of taking the emphasis off—should have emphasized the teaching of socialism to organization, what it means. Because I felt that the

Communist party was not doing that duty I dropped my membership in the Communist party. At the present time I am not affiliated with any political organization.

I want to say that maybe some day . . . I will join the Communist party organization again. I don't want any one to tell me that I have no right to represent the membership of my local union and be a member of a party that I choose to be a member of. (A.G. Ex. 10; M.M. Ex. 5, pp. 385 & 386.)

At the 1953 convention, Mason expressed strong opposition to what he called the complete control exercised in the Union by Maurice Travis and to statements Mason said had previously been made to him by Travis to the effect that the Soviet Union was right in shooting down political opposition (A.G. Ex. 59, pp. 224-225).¹ In 1954, Mason acted with others to secede from Mine-Mill and his office was declared vacant. (Salvas, Tr. 9252)² Respondent's witness Salvas succeeded Mason as Board Member for District 1 by appointment from President Clark which was thereafter confirmed by the International Executive Board. (Salvas, Tr. 9553-54)

61. Ernest Salvas was a Board Member from his appointment in 1954 to succeed Mason until defeated in the 1961 election. Salvas was one of the International representatives that the Montana local wanted removed (*supra*) but instead of removing him the officers appointed Salvas a Board Member. The pertinent evidence as to Salvas was as follows:

(a) Petitioner's witness Moralez attended, on September 21, 1953, a Communist Party meeting at the home of Harlow Wildman. (Tr. 3618-3619A) Wildman at the time was a

¹ This is not considered or taken as proof of the facts but merely as Mason's stated reason for his opposition to Travis.

² Detailed findings are made in the following sections on charges of Communism within the Union itself.

Mine-Mill International representative in Montana. (Salvas, Tr. 9475) The Communist Party meeting discussed working to get Salvas to replace William Mason as board member for the district (Tr. 3619A) and raising funds for Salvas' campaign. (Tr. 3620) Wildman said he had or would donate \$100.00 for the Salvas campaign. (Tr. 3620)

29 (b) A subsequent meeting of the Communist Party was held at Harlow Wildman's home on September 28, 1953. (Tr. 3623-26) Wildman discussed how unfriendly Bill Mason (Board Member) was toward Party members (Tr. 3626) and there was general discussion on the Party working harder to defeat Mason in the coming Mine-Mill elections and get Salvas in office. (Tr. 3627) At the meeting, John Hellman said that Party official Art Bary [not connected with Mine-Mill] had sent word that Morales' name was to be kept out of Salvas' campaigns as much as possible because Mason was already connecting Morales with the Communist Party. (Tr. 3628)

(c) At a Communist Party meeting in 1954, attended by Morales, there was discussion on how to keep control of Mine-Mill locals in Butte and Anaconda; one plan was to have assigned to the Mine-Mill staff in the area either Party members or persons that the Party could work with; Gardner was to be brought in from Idaho to work with Salvas and see that he followed the policy set down by the Party and didn't get off on the wrong road. (Tr. 3653-3656) Present at this Communist Party meeting were Mike Ross and Albert Skinner, Mine-Mill staff members, (Tr. 3654) Cozy Dolan who was in charge of Mine-Mill publicity in the area, (Tr. 3663) and John Hellman, (Tr. 3654) a Party official not in Mine-Mill.

(d) Gardner gave testimony corroborative of that given by Morales and independently evidencing the Communist Party attitude toward Salvas. For instance, Gardner testified that after Salvas had been appointed board member to take the place of Mason, Al Skinner (then a Mine-Mill staff official and member of the Communist Party, *infra*) asked

Gardner to come to Butte permanently since Salvas was a weak person and someone should ride herd on him to make sure the Party policies would be properly carried out in the area. Gardner agreed and was a Mine-Mill International representative in the area until June of 1955, working under Salvas. (Tr. 4905-08)

(e) When certain of the Mine-Mill locals started efforts to force Travis out as an officer of the Union, Salvas worked in support of Travis (*infra*).

(f) Salvas appeared as a witness for respondent in this proceeding. He testified that he has never been a member of the Communist Party (Tr. 9255-D) and there was no evidence connecting him with the Party. If he knew of and acquiesced in the backing given him in the Union by the Communist Party cannot be determined from this record. However, whether he was an innocent dupe for the Party or not, the fact is that his being a member of the Executive Board was, to say the least, acceptable to the Communist Party if not instigated by the Party, and it follows that his holding a position on the Executive Board has not been inconsistent with Communist domination of respondent.

30 62. The members of the International Executive Board at the time of the filing of the Attorney General's petition and the years both before and after (up to 1960) that time during which they held positions on the board were: Jose B. Chaves (1954-1957); John Clark (1947-1960); Raymond Dennis (1950-1960); Irving Dichter (1955-1960); Asbury Howard (1954-1960); Orville Larson (1947-1960); Alton Lawrence (1950-1959); Albert Pezatti (1947-1959); Chase Powers (1943-1960); Ernest Salvas (1954-1960); and Linus Wampler (1954 & 1955).¹

¹ The names of the members of the International Executive Board for various years appears at various places in the record, such as in the testimony and the convention proceedings. The information is also contained in a summary received in evidence without objection (tr. 9714) as A.G. Ex. 108 and 108A.

63. Of the above eleven members of the Executive Board, the facts found *supra* establish that six were members of or affiliated with the Communist Party, namely: Dennis, Dichter, Howard, Lawrence, Pezatti, and Powers.² In addition, Clark was shown to have an affinity for having Communists in the Union and his position as an officer has not been inconsistent with domination and control of the leadership by the Communist members. Also, the fact of Salvias being a member of the board has not been inconsistent with domination and control by the Communists, whether he realized it or not.³

64. Particularly in the light of the findings *infra* on the difficulties that have existed for many years within the Union itself over the issue of Communist orientation of the International officials and the effects in shaping the organization, it is pertinent to make findings and consider the vicissitudes on the International Executive Board from the mid-1940's to the time of the hearing.⁴

31 (a) *International President*

Reid Robinson, a Communist sympathizer, was International President for a number of years until he resigned in 1947 and was replaced by Communist Party member Maurice Travis. Later in 1947, Travis nominated John Clark, who was amenable to Communism, and Clark was

² Since 1955 there has not been a Board Member for District 4, the position held by Linus Wampler in 1954 and 1955, who was not shown as being a member of the Communist Party or in the categories of Clark or Salvias. The top leadership of respondent subsequent to 1955 has consisted of ten instead of eleven persons (see, e.g., M.M. Ex. 129, p. 297)

³ A number of respondent's witnesses who had been delegates to the Mine-Mill conventions testified that they, themselves, had no objections to Communists holding leadership positions in the Union.

⁴ The names of the office holders and the way in which they first acquired office have been based primarily upon petitioner's exhibit A. G. 108 and 108A and the examination of respondent's witness Stern. Where findings as to Communist Party membership or affiliation are made they are based upon the facts already set forth or set forth in subsequent paragraphs.

elected. Clark has served as President continuously since 1948. (Stern, Tr. 6895-96)

(b) *Eastern Vice President*

In 1947, Homer Wilson, who by his own testimony as a witness for petitioner had been cooperative with the pro-Communist group in Mine-Mill, was named by the Board to the newly created office of Eastern Vice President. Reid Robinson, a Communist sympathizer, replaced Homer Wilson in the subsequent referendum vote and held the office until he resigned in 1950. Communist Party member Charles Wilson was appointed by the Board to succeed Robinson. At the 1953 convention, pursuant to arrangements that had been made at a Communist Party meeting, Charles Wilson nominated Communist Party member Asbury Howard for the office and Howard has held the position since then.

(c) *Western Vice President*

Orville Larson, a progressive who supported Maurice Travis,¹ succeeded to the position in 1948 upon being appointed by the Board and continued in office until January of 1960, when Communist Party member Alfred Skinner was appointed by the Board.

(d) *Secretary Treasurer*

Communist Party member Maurice Travis was nominated at the 1947 convention and held the office through subsequent elections until 1954 or 1955, when he resigned.² Com-

¹ In 1946, petitioner's witness Bush was invited and attended a "secret meeting" of the progressive element in Mine-Mill to discuss appointing Maurice Travis as a special assistant to International President Robinson. Orville Larson was among those present at this meeting. (Tr. 2572.) Larson continued to support Travis after Travis had announced his Communist Party membership.

² In the early 1940's, Maurice Travis was an International representative and regional director in the Northwest area; he was then made assistant to President Robinson in the International office. (Bush, Tr. 2557; MM Ex. 5, p. 433) For a period in 1945 or early 1946, Travis was appointed by the Board to serve as Board Member for District 7 while Chase Powers was in a sanitarium. (Stern, Tr. 6906)

munist Party member Albert Pezzati was then appointed by the Board and remained in office until 1959. Communist Party member Irving Dichter was then moved by the Board from Board Member for District 6 and appointed Secretary-Treasurer, and subsequently elected by referendum vote.

(e) Board Member for District 1

William Mason held this position in 1945 and continued until sometime in 1953 when he led a secession movement which terminated his relationship with the Union. Mason had been a member of the Communist Party but resigned and subsequently opposed the positions taken in the Union by Communist Maurice Travis. Ernest Salvas, whom the Communist Party considered to be amenable to them, was appointed by the Board to succeed Mason, and was subsequently elected by referendum vote.

(f) Board Member for District 2

Orville Larson, a progressive and supporter of Travis, was elected in the 1946 elections and held the office until September of 1948 when he was appointed Western Vice President. Chesley Smotherman was appointed by the Board to succeed Larson and was then elected in subsequent referendum vote until 1954 when he was defeated by Jose B. Chavez. In 1958, Chavez was defeated in an election by Communist Party member Al Skinner who held the position until 1960, when he was appointed Western Vice President and Vern Curtis was appointed by the Board to be Board Member for the district.

(g) Board Member for District 3

Angelo Verdu, who held this position, led a secession movement in 1947 which terminated his relationship with the Union. Communist Party member Jesse Van Camp was appointed to succeed him. In 1949, pursuant to arrange-

ments made at a Communist Party meeting, Van Camp nominated Communist Party member Raymond Dennis for the office and Dennis has held it since that election.

(h) Board Member for District 4

This position has not been filled since 1955 because of decision that there was not enough membership in the District to warrant a board member. Linus Wampler held the office in 1954 and 1955, having been appointed by the Board. The office was vacant for a number of years prior to 1954.

33 *(i) Board Member for District 5*

Homer Wilson, who had been cooperative with the pro-Communist faction in the Union, held this office in 1945 and until 1947 when he was appointed Eastern Vice President. At that time, Communist Party member Charles Wilson was appointed to the vacancy as District 5 member and remained in office until appointed Eastern Vice President in 1950 upon Homer Wilson's resignation. Communist Party member Alton Lawrence was then appointed to replace Charles Wilson and held the office until he resigned in 1959, and M. C. Anderson was appointed.

(j) Board Member for District 6

John Mankowski was in this office in early 1947 when he led a secession movement which terminated his relationship with the Union. By appointment of the Board, Communist Party member Al Pezzati replaced Mankowski and remained in office until appointed Secretary-Treasurer in 1954. Communist Party member Irving Dichter was appointed to succeed Pezzati as Board Member and Dichter held the office until he was appointed Secretary-Treasurer in 1959 at the time of Pezzati's resignation. Alfred Petit-Clair was then appointed.

(k) *Board Member for District 7*

This position has been held continuously by Communist Party member Chase Powers except for a short period in 1945 or 1946 when Communist Party member Maurice Travis was appointed to take his place during an illness.

65. From the foregoing it develops that from about 1945 a total of 25 positions have been filled on the Executive Board and at least 16 of the individuals involved originally acquired their leadership positions by appointment.¹ Of the 16 appointments made, nine were given to persons
 34 who were members of the Communist Party,¹ two were given to persons shown on this record to have been at least cooperative with the Communist Party,² and one to a person whom the Party wanted and considered cooperative.³ In addition, there were two instances where the officials who first obtained office by election were members of the Communist Party and it was decided at Party meetings prior to the nominations that the incumbents, who were also Party members, would relinquish their offices in favor of the successors.⁴

¹ According to the stipulation received after the hearing had ended (*supra*) all of the officers and executive board members holding the positions in 1960 were reelected in May of 1961, except that Barney Rusk was elected Board Member for District 1, Maclovio Barraza (found *infra* to have been a member of the Communist Party) was elected Board Member for District 2, and James R. Buck was elected Board Member for District 7.

² Dichter (two different appointments), Lawrence, Pezzati (two different appointments), Skinner, Van Camp and C. Wilson (two different appointments).

³ Larson and H. Wilson.

⁴ Salvas.

⁵ Party member C. Wilson stepped down as Eastern Vice President and nominated Communist Asbury Howard at the 1953 convention, and Van Camp in 1949, stepped down in favor of Raymond Dennis as Board Member for District 3.

Staff Members

66. In addition to the International Executive Board, the affairs of the Union have been administered and carried out with the help and assistance of various persons designated as staff members (*supra*). The more important have been an Editor of the Union paper, a Research Director, and the International Representatives or organizers (*supra*). The evidence as to Communist Party affiliation on the part of various staff members will now be considered.

67. From 1945 until at least the fall of 1955, the Editor of the Union official organ was Morris Wright. (A.G. Ex. 104; Stern, Tr. 6908) Petitioner's witness Duran knew Wright as a member of the Communist Party in the 1950's and attended Communist Party meetings with him. (Tr. 3069; 3075-3089) Duran first met Wright at the Mine-Mill headquarters in Denver. (Tr. 3067-3068) On either the last day of 1954 or the first day of 1955, a New Year's Eve Party was given at the home of Morris Wright attended by a number of Communist Party members to celebrate the fact that one Alfredo Montoya had become an International representative of Mine-Mill. (Tr. 3083-84) Duran knew Montoya as a member of the Communist Party. (Tr. 3089)

68. In 1955, Graham "Cozy" Dolan succeeded Wright as Editor of the Union newspaper, under the supervision of Al Pezzati (Stern, Tr. 6908-09) Findings on the Communist Party affiliation of Pezzati have been made *supra*. There is considerable evidence of Dolan's activities as a member of the Communist Party, the more important of which will now be set forth. At a meeting of a Communist Party group attended by petitioner's witness Moralez, at which Hellman, Gardner, and Dolan were present, Dolan gave a report on Lenin's book "What Is To Be Done"; he emphasized that the intellectuals would be the leaders in the Communist Party, not the working people. (Tr. 3830-36) At a Party meeting on December 21, 1954, Moralez was present during a discussion between Dolan

and Hellman about Gardner; Dolan said he was going to have Gardner investigated because he was going against the Mine-Mill line, and that he, Dolan, had the power to get Gardner fired. (Tr. 3767-71) Petitioner's witness Gardner also attended Communist Party meetings in the mid-1950's where Dolan was present and took an active part; at one of the meetings Dolan criticized Gardner for taking an anti-Communist Party position in a Mine-Mill matter. (Tr. 5054-55; 4909-18) Dolan was present at the first Communist Party meeting that petitioner's witness Carmen P. Wilson attended, which was in the early 1940's. (Tr. 1410-17) Wilson subsequently attended other Party meetings with Dolan, at one of which the discussion was on the Mine-Mill organizing drive at the Remington Arms plant—this was in the summer of 1944. (Tr. 1429-30) At this time, Dolan was in the Editorial Department of Mine-Mill. (Tr. 1416)

69. The Union newspaper has been an important link between the Mine-Mill leadership and the rank and file members, and so considered by the Union officials. (see E.G., M.M. Ex. 128, p. 67; M.M. Ex. 129, p. 248) Over the years there has been strong criticism of the Union paper by the anti-Communist people in Mine-Mill (*infra*) and the paper has often advanced positions similar to the positions taken by the Communist Party, including positions on the foreign affairs of the United States (*infra*).

70. According to respondent's witness Stern, Mine-Mill research director, there has not been an Educational Director since 1952 but there was one between 1947 and 1952; the first one was Dolan (found above to have been quite active in the Communist Party) whose activities were later merged with publicity and editing the Union paper. (Tr. 6907)

71. Bernard Stern, the Mine-Mill Research Director, first joined the staff in 1945 after having been interviewed by

then President Reid Robinson. (Tr. 6567-68; 6894)¹ Petitioner did not present any witness who gave testimony showing that Stern had been in, or affiliated with, the
 36 Communist Party. Stern testified that he was not at the time of testifying a member of the Communist Party; he refused to answer on constitutional grounds whether he had been a Party member during the years 1948 until 1960 (tr. 7039-41).¹

72. The International representatives have comprised a quite large category of staff members. Perhaps as many as a hundred or more persons were mentioned in the testimony as International representatives at one time or another. A list of staff members and clerical employees hired during the years from January 1, 1946, to October 1, 1960, was put in evidence by respondent (M-M Ex. 156). It includes around 400 names of staff members although a good many were hired for only a few days or weeks. Taking the years from 1952 through 1959, both inclusive, and taking those who served as International representatives for at least seven or eight months, the list shows some 65 persons.

73. Neither party presented any proposed finding or argument directed precisely to the extent that Communist Party members have been hired as International representatives. Petitioner by the testimony of his witnesses showed

¹ According to Stern, the function of the Research Department is to provide factual and technical information for officers and staff in carrying out their union activities, such as providing economic information on conditions in particular industries and companies, bargaining trends, and what other unions are doing in the field. (Tr. 6568-69) His department carries out work in the whole field of health and safety. (Tr. 6569-70) The department analyzes and advises on all industry legislation, Federal and State. (Tr. 6570)

¹ No considerations adverse to Stern are warranted because of his use of the Fifth Amendment provision against self-incrimination. He also invoked the privilege on whether he knew various named officers of Mine-Mill to be Party members, such as Dichter and Skinner; (Tr. 8201-04) whether the Communist Party had a position on Taft-Hartley compliance (Tr. 8214) and then changed its position; (Tr. 8215) and, whether he knew any of the Mine-Mill staff including the International representatives to be members of the Communist Party. (Tr. 8223-25)

that throughout the years many International representatives have been Communist Party members, and these were included in petitioner's proposed findings. Like the situation with the Executive Board members (*supra*) none of the persons who were identified by petitioner's witnesses as International representatives and members of the Communist Party as well appeared to deny the evidence.

74. The International representatives who were shown to have been members of the Communist Party will now be set forth. The names of some also appear in the findings already made. The dates in parentheses following the names are the dates of employment as shown by respondent's exhibit 156; Maclovio Barraza (6/16/52 to date);² Raymond Dennis (became Board Member, see *supra*); Irving Dichter (became Board Member, see *supra*); Graham Dolan (various staff assignments from 11/6/47 to 10/31/59); James Dougherty (1/21/52 to date); James Durkin (8/11/52
37 to 12/31/55); Kenneth Eckert (member of the Executive Board, 1946-1948); Forrest Emerson (not on M-M Ex. 156); Sam Feldman (2/12/47 to date); Jack Flaherty (prior to 1/1/46 to 3/20/50); Art Flores (2/1/51 to 12/31/53 and part of 1954); Fred Gardner, petitioner's witness (8/27/51 to 7/15/55); William Gately (in 1947, 1948 and 11/1/48 to 3/31/60); Elwood Hain, petitioner's witness (June, 1946 to 6/7/49); Rudy Hansen (at times in 1954 and 1955); Don Harris (few Months in 1948); Matt Hill (not on M-M Ex. 156); Lowell Hollenbeck (part of 1947); Henry Horowitz (6/3/46 to 7/31/51); Asbury Howard (became Board Member, see *supra*); George Knott (prior to 1/1/46 to 4/15/49); Alton Lawrence (became Board Member, see *supra*); Howard Lee (prior to 1/1/46 to 12/31/49); Ray Lee (short period in 1955); Duke McKenna (4/7/48 to 8/20/49); Alan McNeil (not on M-M Ex. 156); Alfredo Montoya (2/9/54 to 9/30/55, period in late 1959, period in early 1960); Arthur Morales, petitioner's witness (2/1/54 to

² Elected Board Member for District 2 on May 17, 1961, for a two year term. (Stipulation, Tr. 9724)

3/27/54); Harvey (Dennis) Murphy (3 months in 1950); Jesse Nichols (prior to 1/1/46 to 9/10/48 and 10/16/50 to 2/15/51); Albert Pezzati (became Board Member, see *supra*); Peter Piekarski (few months in 1954 and again in 1955); Chase Powers (became Board Member, see *supra*); William Quill (prior to 1/1/46 to April 1947); Henry Rapuano (11/16/48 to date); Mike Ross (9/19/52 to 9/30/55); Bob Schrank (2/1/52 to 9/15/55); Bob Shriner (not on M-M Ex. 156); Al Skinner (became Board Member, see *supra*); Cal Sutherlin (not on M-M Ex. 156); Maurice Travis (became Board Member, see *supra*); Jesse Van Camp (dates not given on M-M Ex. 156); Maurice Wechsler (not on M-M Ex. 156); Harold Wildman (prior to 1/1/46 to 12/31/58); Charles Wilson (became Board Member, see *supra*).

75. The above findings show that consistently throughout the years from at least January 1, 1946, and continuing through at least 1959, there have been a substantial number of Communist Party members who were hired by Mine-Mill and worked as International representatives.

76. Careful consideration has been given to the question whether the facts of Communist Party membership and membership on the Mine-Mill International staff might have been mere coincidences. As will appear, the reasonable conclusion from this record must be in the negative.

77. An important consideration has been the Communist Party meetings attended by these people for discussing and planning programs and activities in connection with the Union.¹ The evidence consisted of the testimony of petitioner's witnesses who were themselves members of
 38 the Party and participated in the particular Party meetings. The summaries that follow will be made by witnesses. In some instances Mine-Mill clerical employees were present at the Communist Party meetings attended by

¹ Many of the members of the International Executive Board have themselves attended and participated in meetings of the Communist Party. (*Supra*.)

petitioner's witnesses, and will be included with appropriate identification. To avoid unnecessary repetition, the names of persons who were Mine-Mill International representatives at Communist Party meetings will be capitalized and the names of those who were Mine-Mill clerical employees will be underscored. [*italicized*]

78. Petitioner's witness Duran. Attended the Colorado State convention of the Communist Party in December of 1950, which was held at the home of MIKE ROSS. (Tr. 3048) One of the teachers at classes or meetings of the National Mexican Commission of the Communist Party, held at a Party school in Los Angeles in the latter part of 1950, was ALFREDO MONTOYA; the purpose was to educate those present on how the theory of Marx and Lenin could be put into practice in the Southwestern United States; the National Chairman of the Mexican Commission introduced ART FLORES as a labor leader in Mine-Mill and a person they were very fortunate to have in the National Mexican Commission of the Communist Party. (Tr. 3050-3052) Duran met *Virgil Akeson* at a County Committee meeting of the Communist Party in Denver in May of 1951, and attended subsequent Party meetings at *Akeson's* home; one of these was in March of 1952 with representatives of the Colorado State Committee at the Party at which Akeson checked security. (Tr. 3089-94) M-M Exhibit 156 lists *Virgil Akeson* as a clerical employee from prior to January 1, 1946, and still there as of October 1, 1960. (p. 12) Duran knew MORRIS WRIGHT as a member of the Communist Party and Wright attended a closed Party meeting at Duran's residence in November of 1953. (Tr. 3071-78) ALFREDO MONTOYA was among those present at this Party meeting. (Tr. 3075-78) Mine-Mill Exhibit 156 lists MORRIS WRIGHT as a staff member from prior to January 1, 1946, until November 30, 1955.

79. Petitioner's witness Gardner. During the period from April of 1954 to May or June of 1955, while GARDNER

was in Butte, Montana, as a Mine-Mill International representative, he was a member of a Communist Party group composed of John Hellman, the Communist Party organizer for the State of Montana and for northern Idaho, GRAHAM DOLAN and ARTHUR MORALEZ. (Tr. 4907-08) This Communist Party group met on various occasions to discuss Mine-Mill matters and to plan the approaches and actions to be taken. (see E.G. Tr. 4913-16; 5053) In February of 1955, GARDNER attended a Communist Party meeting in a hotel room in Denver, Colorado. (Tr. 4937) JAMES DURKIN and then ALBERT SKINNER notified GARDNER of the meeting, and SKINNER said the purpose of the meeting was to discuss for the Rocky Mountain Region of the Party

certain activities of GARDNER as a Mine-Mill representative. (Tr. 4938-39) Present were HAROLD

SANDERSON, James Dirksen, JAMES DOUGHERTY, ALBERT SKINNER and GARDNER. (Tr. 4940)

In either January or February of 1955, immediately after a meeting of the Mine-Mill leadership in the Butte area, there was a Communist Party meeting with DOLAN, MORALEZ, GARDNER and Communist Party official John Hellman present. DOLAN stated that GARDNER had played an anti-Communist Party role at the previous meeting of the Mine-Mill leadership, and Hellman advised there should be more discussion in the future. (Tr. 4933-35)

80. Petitioner's witness Hain. During the year 1946, Hain was asked by Art Steward and Hank Boswell, members of a Mine Mill local, to drop in at a Communist Party meeting, which he did; among those present was HOWARD LEE. (Tr. 3005-08) Later, in the spring of 1947, Hain signed up to join the Party at a meeting where HOWARD LEE was again present and told Hain not to sign his real name to the Communist Party card; Hain made his first initiation fee payment to LEE. (Tr. 3014-17) At the same meeting, HOWARD CASE also signed up to join the Party. (Tr. 3015) Mine-Mill Exhibit 156 lists HOWARD CASE as a staff member from August of 1946 to April of 1947.

81. Petitioner's witness Kent. In 1954 Kent was appointed a member of the State Concealed Board of the Communist Party of which IRVING DICHTER was also a member. (Tr. 1708-25; 2085-86) Previously, in 1953, Kent attended a meeting of the Trade Union Commission of the Communist Party and IRVING DICHTER was present and took an active part. (Tr. 1705-08)

82. Petitioner's witness Morales. In July of 1952, MORALEZ was appointed a member of the Communist Party Regional Committee and attended meetings during 1952, 1953 and 1954. (Tr. 3471-77) This committee was appointed by Art Bary, the Director of the Communist Party Rocky Mountain Region, and the other members in addition to Morales were AL SKINNER, LOUIS JOHNSON (shown as a Mine-Mill staff member on Mine-Mill Exhibit 156), PETER PIEKARSKI, GORDON DOUGLAS, and John Hellman. At one of the meetings of the Party Committee reports were given by Party members from various regions in the area on Communist Party and Union problems, and there were discussions on Party schools, recruiting, and finances; the Party wanted to recruit as many members as possible from the local unions and have Party members active on different committees of the local unions. (Tr. 3549-58) At another meeting, held in April of 1953 at Idaho Falls, with AL SKINNER, GORDON DOUGLAS, and John Hellman present, reports were given on the local unions and Party functions in the Union were discussed. (Tr. 3568, 3571-74) At a meeting of this Party Committee held at Missoula, Montana, in the spring of 1954, the others present were John Hellman, LOUIS JOHNSON, and PETER PIEKARSKI; this meeting was concerned with discussions of Mine-Mill and certain of its leadership, one topic
 40 was the possibility of Mine-Mill going into the American Federation of Labor since it was a good idea to be getting into the mainstream of labor, another topic was having AL SKINNER replace MAURICE TRAVIS as a Mine-Mill International Official. (Tr. 3594-3600) Other dis-

cussion at this meeting was on the need to set up a school for advanced Communist pupils with LOUIS JOHNSON as the teacher. (Tr. 3599)

83. Morales attended a Communist Party meeting in Butte, Montana, in 1952, of what was called the Mine-Mill Committee. (Tr. 3612-16) Present were Ray Graham (Mine-Mill local member), HARLOW WILDMAN, John Hellman, RAY LEE, and Lee Clarke. (Tr. 3613-14) The purpose was to discuss how the Party members were to operate in the Union and what was to be done about Union problems. (Tr. 3616) Among other Communist Party meetings attended by Morales, those who also were present, and some of the subject matters were: a meeting during a Mine-Mill secession movement in Butte, present were LOUIS JOHNSON, AL SKINNER, and John Hellman, discussed the secession movement, putting Party members on the Mine-Mill staff, and bringing FRED GARDNER into the area; (Tr. 3637-43) a meeting also during the secession movement in 1954, present were MIKE ROSS, John Hellman, ALBERT SKINNER, and GRAHAM DOLAN, purpose was to plan a way to keep control of Mine-Mill locals, and there was discussion of putting on GEORGE KALAFATICH as an International representative since he was a possible recruit into the Communist Party. (Tr. 3653-67; 3995; 4037-38) (KALAFATICH is shown on Mine-Mill Exhibit 156 as a staff member from June 1954 to date—there was no evidence that he in fact joined the Communist Party); various meetings, also testified to by GARDNER, *see supra*, in connection with a controversial strike settlement, present were John Hellman, GRAHAM DOLAN, and GARDNER—at one of the meetings Hellman stated that the Communist Party would back Mine-Mill right or wrong because through Mine-Mill the Communist Party had a foothold into labor, at another meeting Hellman stated that if the Party lost its foothold in Mine-Mill it would set the Party back many years, at another meeting DOLAN gave a report on Lenin's book "What Is To Be Done," and the coming Mine-Mill

convention was discussed. (Tr. 3733-3836) There were other Communist Party meetings attended by MORALEZ involving one or more of the persons covered in the meetings set forth and no purpose would be served in detailing them.

84. Petitioner's witness Paumi. Attended a closed Communist Party meeting in 1942 with some members of a Mine-Mill local present as well as IRVING DICHTER and CAL SUTHERLIN; the purpose was to discuss issues coming up at the meeting of the local, and to plan for distributing the Daily Worker. (Tr. 1482-83)

85. Petitioner's witness Carmen Wilson. In late 1942
 41 *Carmen Wilson* was employed as a secretary in the South Denver office of Mine-Mill and shortly thereafter, at the suggestion of certain Mine-Mill staff members at the office, joined the Communist Party and was assigned to the Trade Union Branch of the Party. (Tr. 1407-09) The first Communist Party meeting that she attended was held at the home of either FORREST EMERSON or RAY LEE. (Tr. 1410) Present, in addition to *Carmen Wilson*, were: FORREST EMERSON, HAROLD SANDERSON, GRAHAM DOLAN, Mrs. Eunice Dolan, MATT HILL, RAY LEE, Chuck Binna, Ed Bouche, and ALAN McNEIL. (Tr. 1410-1411) The substance of the discussion concerned a big organizational drive by Mine-Mill at the Remington Arms plant in Denver. (Tr. 1411) The chairman of the meeting was ALAN McNEIL and he told the group that even those present such as Binna and Bouche who were members of other unions were to assist as much as possible in the Mine-Mill organizing drive at Remington Arms. (Tr. 1411-12) *Carmen Wilson* attended subsequent meetings of this Communist Party branch, some at RAY LEE's home, some at FORREST EMERSON's home, and some of them at GRAHAM DOLAN's home. (Tr. 1414) Later, at a closed meeting of the Communist Party branch attended by HAROLD SANDERSON, Mr. and Mrs. GRAHAM DOLAN, FORREST EMERSON, Chuck Binna, Ed Bouche, and *Carmen Wilson*, there was strong criti-

cism of the way in which FORREST EMERSON was conducting the campaign to organize the Remington Arms plant and he was informed that he had failed as a member of the Communist Party. (Tr. 1417-18) This was in the spring of 1943. (Tr. 1419) About six weeks after this meeting, FORREST EMERSON left his employment with Mine-Mill, (Tr. 1419-20) and told *Carmen Wilson*, who expressed sympathy to him, not to show her sympathy for him because if she did she would lose her job. (Tr. 1420) *Carmen Wilson* attended a meeting of the Communist Party in late spring or early summer of 1944, together with Ed Bouche, GEORGE KNOTT, *Grace Peterson*, HAROLD SANDERSON, GRAHAM DOLAN, Eunice Dolan, Chuck Binna, Mrs. Art Bary, and the heads of other branches of the Communist Party.¹ (Tr. 1429)

86. Other considerations, in addition to attendance at Communist Party meetings involving Mine-Mill activities, appear later, and are pertinent in showing that membership in the Communist Party of Mine-Mill staff personnel was more than a mere coincidence. The dual membership and interrelated activities are, of course, pertinent to the ultimate issues in this proceeding.

42 87. In the findings already made certain Mine-Mill clerical employees are included as Communist Party members. These and other International clerical employees who were shown to have been members of the Party were: Virgil Akeson, as to whom there was evidence of attending

¹ Counsel for respondent objected to this and all other evidence presented by petitioner before the three year period fixed in the statute. (See *supra*, and also tr. 1436-38.) Aside from the admissibility as background, in this and other instances, the evidence was connected up by subsequent evidence. For instance, subsequent evidence connected Harold Sanderson as a Mine-Mill staff member up to and during the hearing. (Bush, Tr. 2573; Gardner, Tr. 4893-94; Henderson, Tr. 2822; Brown, Tr. 5797; Buck, Tr. 9098, 9100, 9105-07; Buckner, Tr. 8327-28, 8330, 8382-83, 8387-88; Church, Tr. 9224-26; Coleman, Tr. 5578)

Communist Party meetings during 1951 and 1954, and who was still an office employee of Mine-Mill on October 1, 1960; (Duran, Tr. 3089-93; MM Ex. 156) Mrs. Frantz, secretary of the Mine-Mill District 5 office in 1943 (H. Wilson, Tr. 759-63); Edith Lumer, an office employee during 1951-1955, was not shown to be a member of the Party but was the wife of a National Officer of the Communist Party and had been assigned her job in Mine-Mill by the Party (Gardner, Tr. 4888; MM Ex. 156); Anthony Morton, a Mine-Mill employee from early 1954 and still with the Union on October 1, 1960, was shown to have been at a meeting of the Colorado State Committee of the Communist Party in 1952, and at other Communist Party meetings in 1954-1955 (Duran, Tr. 3082-3092; MM Ex. 156); Grace Peterson, who acted as an assistant to a Mine-Mill organizer in the 1940's, joined the Communist Party after being employed by Mine-Mill and was present at Party meetings in the 1940's (C. Wilson, Tr. 1425-36); Ben Riskin, a Mine-Mill research director in the early 1940's, was not shown to have attended Communist Party meetings but it was established that he was forced out of the Union on charges of being a Communist at a time when the anti-Communist faction had a certain amount of power (see *infra*). (Rasmussen, Tr. 162; H. Wilson, Tr. 773-74)

88. The various conclusions which are indicated from the facts found in this section are best considered in the light of the facts to be found in subsequent sections and will, therefore, appear later.

C. THE COMMUNIST PARTY OF THE UNITED STATES

89. Before considering additional aspects of the evidence on Communism in respondent, findings will be made on the policies and practices of the Communist Party of the United States as to labor unions in general and Mine-Mill in par-

ticular, and the reactions of certain Mine-Mill people to Communism.¹

90. The un rebutted and uncontradicted evidence of record showed that the teaching and doctrine of the Communist Party has been that society is divided into two main contending classes—the bourgeoisie and the proletariat—and that these classes are in irreconcilable conflict. (Hartle, Tr. 5257-58) Proletariat is a term for the working class, the proletarian is a worker. (Hartle, Tr. 5258) Under
43 this teaching and doctrine of the Communist Party the United States is a bourgeoisie state—a state of the capitalist class—and Party doctrine is that it is the mission of the working class, led by the Communist Party to forcibly overthrow this bourgeoisie state. (Hartle, Tr. 5258; Moralez, Tr. 4032-4033; Duran, Tr. 3121-3122, 3399-3401) The Party depicts itself as the instrument of the working class for the overthrow of the capitalist class, and for the establishment of the dictatorship of the proletariat—the forcible suppression of the capitalist class in order that the working class, led by the Communist Party, will rule. (Hartle, Tr. 5258-59)

91. On the basis of an order of the Subversive Activities Control Board issued on April 20, 1953, and the opinion of the Supreme Court of the United States rendered on June 5, 1961, in *Communist Party of the United States v. Subversive Activities Control Board*, 367 U.S. 1, rehearing denied 30 L.W. 3115, official notice is taken that the Communist Party of the United States is a “Communist-action organization” as that term is defined in section 3 of the Subversive Activities Control Act of 1950, as amended. Accordingly, it is a “Communist-action organization” for the purposes of section 3 (4A) of the Act.

¹ Many facts evidencing domination and control of Mine-Mill by Communists, and evidencing aid and support of the Communist Party by Mine-Mill and its leadership, in addition to the findings already made and made in this section, will appear in subsequent sections. A separate section will then be devoted to considering in more detail the evidence presented by respondent.

92. The evidence in this proceeding established that the program of the Communist Party has been to gain control of labor unions. (Hartle, Tr. 5265-66; Moralez, Tr. 3558) The Party has looked upon labor unions as organizations of the working class through which the Party can work, and the Party has put great stress on labor unions as most important for carrying through the aims of the Party. (Hartle, Tr. 5264-5266)

93. (a) The findings *supra* and in following sections contain many instances of specific attention given by the Party to Mine-Mill. These findings include discussions and planning in connection with Mine-Mill at Communist Party meetings attended by Party members holding office in Mine-Mill and by Party functionaries not in Mine-Mill.

(b) Of the more general expressions of the Party's policy toward Mine-Mill the record contains the following, among others: Irving Dichter, in 1954, while meeting in connection with a strike settlement, referred to Mine-Mill, in a conversation with Gardner, as one of the last voices of the Communist Party in the trade union movement and stressed the necessity of approaching Mine-Mill affairs in a political way.¹ In 1947, Ralph Shaw, at a meeting attended by Elwood Hain, answered a question from Hain about Communist Party and Mine-Mill policy by stating that Mine-Mill would deteriorate without the guidance of the Communist Party. (Tr. 3010-13) Years later, around mid-1954, Hain was present at a discussion between Mine-Mill functionaries James Dougherty and Tim Finley during which Dougherty, a member of the Communist Party, stated that the salvation of the country was for the Communist Party to take over. (Tr. 2818-19) The witness Kent attended a meeting of the Trade Union Commission of the Communist Party in early 1953 at which Mine-Mill official Dich-

¹ The expulsion by the C.I.O. in 1950 of Mine-Mill and certain other labor unions (*infra*) on the ground, insofar as C.I.O. was concerned or thought, that the expelled unions were Communist orientated could have contributed to Dichter making this remark. (See finding 52, *supra*.)

ter was also in attendance. (Tr. 1705-08) The purpose of the meeting was to have those who were not C.I.O. members to try and get C.I.O. members that they knew to have people sympathetic to the Communist Party nominated as delegates to the C.I.O. convention. (id)

(c) In September of 1952, Morales attended a meeting of a Communist Party regional committee at which the discussions included recruiting as many people as possible from the Mine-Mill local to become members of the Communist Party, and getting Party members active on various Union committees. (Tr. 3549-58) Morales attended other Communist Party meetings in the period 1952-1954 where the discussions were on getting Mine-Mill into the A.F.L. or the United Mine Workers. (Tr. 3568; 3571-74, 3594-98, 3612-16, 3761-63) At one of these meetings, Party functionary John Hellman, not in Mine-Mill, remarked that the United Mine Workers would not take Mine-Mill unless Mine-Mill got rid of the International officers who were Party members and if that happened, the Communist Party would lose its foothold in Mine-Mill which would set the Party back thirty years. (Tr. 3761-63) In 1946, Travis replied to the complaints of Homer Wilson about sending Communists into Connecticut as Mine-Mill organizers by telling Wilson that the Communist Party organized Mine-Mill in the first place and was not going to give up, and Wilson could go along with the Party or get out. (*Supra*)

94. The evidence of record shows that the Communist Party has had the policy and program to work very hard to elect Party members as officers in unions, and to also work hard to elect persons who, although not Communists, are amenable to Communism and work along with Communists. (Hartle, Tr. 5268)

95. The findings that have been made under the heading "Communists in the Leadership of Respondent" show that to a marked and substantial extent the officers of respondent have at all times numbered many members of the Com-

munist Party and others who, although not shown to have been Party members, were clearly amenable to Communism.

96. The evidence of record shows that the Communist Party has sought to gain control of labor unions through recruiting members out of them; getting Party material to them; and, having Party members active in the unions and working very assiduously on measures of interest to the general union membership and in the course of that
 45 raise the education of the workers and show them that it is not enough to get higher wages, show them who their enemy is and how to overcome the enemy and establish a Communist system. (Hartle, Tr. 5267-68)

97. The foregoing finding must be considered in connection with the continuing practice, found *infra*, of the International officers of Mine-Mill in advancing and having Mine-Mill adopt policies and take positions on international political affairs and positions in opposition to the laws of the United States, which laws have as their purpose to prevent world Communism from achieving its aims in the United States. The continuing advancing by the Mine-Mill officers of the position that big business or the capitalists in the United States are the enemies of the working class is in line with the aims of the Communist Party as found above.

98. The rank and file members of the Union presented as witnesses by respondent clearly established that a large majority of the persons who were members of the Union at the time of the hearing were satisfied and in some instances enthusiastic with the gains in wages, hours, and working conditions that had been achieved while members of Mine-Mill.¹ Most if not all of the more than 100 rank and file mem-

¹ Concrete evidence of gains in wages, hours, and working conditions was given by Bernard Stern, respondent's research director, who, after sketching earlier years, testified in detail as to the results of bargaining with the employers beginning with the period of World War II (e.g., tr. 6609-6782). Stern, and also the assistant research director, Stuart, testified to the accomplishments of respondent in other areas as well. Further consideration is given to this later herein.

bers who testified for respondent showed from their testimony that the officers of respondent, who were shown on this record to be members of the Communist Party or working with the Party, have gained the support and confidence of the witnesses, none of whom were themselves Party members. A rather uniform theme of the testimony was that Asbury Howard, Irving Dichter, Chase Powers, Al Pezatti, Al Skinner, Maurice Travis, etc., were very good trade union leaders and conscientious in their work. See, for example, the testimony of Frank Bruske from Local 82; (Tr. 7748-49) Glen Buckner from Local 392; (Tr. 8386-87) and Joseph Dipenza from Local 485. (Tr. 4558-65) The convention proceedings are replete with praise by the officers of respondent of one another, and praise of the officers by various delegates. For example, resolutions committee chairman Alton Lawrence moved the following resolution which was adopted by the 1952 convention:

46 RESOLVED, we commend Brothers Jack Clark, Orville Larson, Charles Wilson and Maurice Travis for the leadership they have shown. We appreciate greatly their determination never to flinch from the job to which we have elected them. We are anxious to show our respect for these brothers and others, namely, Graham Dolan and Al Skinner, in this time of assault from the anti-democratic, anti-union McCaran Committee. As Mine-Mill members, we want to go on working side-by-side with this leadership. Together we have proved what unionism can mean in the betterment of the lives of workers, union without regard to color or creed. (M.M. Ex. 125, p. 44.)

99. (a) The importance of the fact that the Communist officers of respondent have gained the confidence and support of the majority of the Union membership was given

added significance by the extent to which this confidence goes, as evidenced by the findings now to be made.¹

(b) The witness Buckner testified that it is none of his business if the leadership of Mine-Mill was Communist, and he never had any feeling one way or the other about Communists in positions of leadership in the Union. (Tr. 8384-86) Demonstrating the extent to which Buckner is willing to follow the leadership, Buckner was on the legislative committee, chaired by Irving Dichter, at the 1948 convention, and went along with a recommendation favored by Dichter although he, Buckner, did not personally favor the recommendation. (Tr. 8353-60)

(c) The witness Verne Curtis, Board Member for District 2 at the time he testified, stated flatly that he has no objection to a Communist Party member holding office in labor unions. (Tr. 8412-13)

(d) The witness Melvin Green was a delegate to the 1958 and 1959 conventions. (Tr. 7246-53) He voted for resolutions opposing the McCarran Immigration Act, the Internal Security Act, and the Butler-Brownell Registration Act. He could not recall at the time of testifying what these were about but said he could not see how they helped the working men—he took the word of Ray Dennis that they were laws that would not help labor. He testified that if Ray Dennis or Jesse Van Camp told him a law was bad for labor, he would take their word for it. (Tr. 7281-95)

(e) The witness Stanley Wenham first joined Local 593 in the year 1942 as a charter member, was the first president of the local, has held the office a number of times since, and has attended many conventions and District 6 conferences. (Tr. 5806-07) He has worked with

¹ The fact that the Communist officers have won the support was established from the testimony of the rank and file members (since they were apparently intended as a representative cross-section), from the convention proceedings, and from the continuance in office that they have achieved by a combination of appointments and elections.

Asbury Howard, Al Pezzati and Irving Dichter. (Tr. 5816-40) He never asked them if they were Communist Party members, and it does not matter to him whether any officers of Mine-Mill are Communists. (Tr. 5840-43)

(f) The witness Severino Merino of Local 890 attended as a delegate the Mine-Mill conventions in 1957 and 1959. (Tr. 8830-32) He testified that he did not pay much attention to what was going on and could not make heads or tails out of what was happening. (Tr. 8853) He testified that he does not know the Communist position on things and it would not make any difference to him if he did know it. (Tr. 8848)

(g) The witness John Piano, Local 85, was aware that Mine-Mill has been called a Communist Union and that certain of its officers have been called Communist Party members. He testified that he was gratified his local has remained with Mine-Mill because he believes Mine-Mill is in the best position to deal with zinc problems. (Tr. 7549-51)

100. The facts of record require the conclusion that with relatively few exceptions the Communist officers and staff members of the respondent have concealed the fact of their membership in the Communist Party from the other members of the Union. Most of respondent's witnesses testified that various of the specific officers, such as Dichter, Powers, Skinner, Howard, and Lawrence, never told them (the witnesses) that they (the officers) were members of the Party. In only a few instances had any of respondent's witnesses asked any of these officials if they were Party members. Where they had, the officers told the witnesses they were not members—Jesse Gaines as to Asbury Howard; (Tr. 7481-83) Vincent Giacone as to Van Camp; (Tr. 7854-58) William Thomas as to Alton Lawrence, Asbury Howard and Charles Wilson. (Tr. 7423-26) In the face of the many and consistent charges within the Union that the International officers were Party members, there is no evidence where those so identified as members in this proceeding met the charges by denying Party membership. Instead, they discoursed on "red-

baiting" (see *infra*). An exception was Maurice Travis who announced his resignation from the Party, and thus admitted his membership, but this was only in order to sign a non-Communist affidavit. None of the officers identified on this record as Party members appeared to deny or rebut the evidence against them.

D. ISSUE OF COMMUNISM WITHIN THE UNION ITSELF

101. The record reflects, as the findings about to be made will show, that throughout the years from at least 1938 until the time of the hearing there have been serious conflicts within the Union itself over charges of Communist orientation of the International.¹ The mere existence of dissension and factionalism caused by charges of Communist infiltration and domination of the International would not, of course, be determinative of the truth of the charges or of the issues in this proceeding. It is necessary, therefore, to consider the various events and occurrences in some detail to determine from the activities of those involved whether the facts add up to evidencing efforts to obtain or maintain control of the International by Communists for Communist purposes, or whether the situation has been one where for personal ambitions or some other reason, reckless and unjustified accusations have been made against the International.

During the Robinson Presidency

102. In 1938 and continuing until 1946 Reid Robinson was International President of Mine-Mill. (A.G. Ex. 108) During his regime there existed on the International Executive Board and elsewhere in the Union pro-Robinson factions and anti-Robinson factions. Anti-Communism was part, at least, of the platform or creed of the anti-Robinson faction.

¹ Evidence as to events and occurrences as far back as the late 1930's and early 1940's was presented and provides illuminating background for the situation within the Union during subsequent years and at the time of the hearing.

Significant developments during Robinson's regime will now be summarized.

(a) In late 1938, petitioner's witness Rasmussen was selected by a left-wing group in Mine-Mill to be a delegate to the first convention of the C.I.O. (Tr. 135) While at the convention, he had occasion to discuss with Reid Robinson and James Leary, President of a Mine-Mill local in Butte, Montana, the complaint (contention) of Leary that there was considerable Communist activity taking place in Butte which was disrupting the local union. (Tr. 140) Robinson's action with respect to this was to arrange for himself, Rasmussen, and Leary to meet the following day with Roy Hudson, a national officer of the Communist Party in charge of the Communist Party work in trade unions throughout the entire country. (Tr. 141) When they met together, Hudson stated that the Communist Party had a definite interest in Mine-Mill and he would use his influence to straighten out any Party activities that might be disrupting the Mine-Mill local in Butte. (Tr. 144) It is significant not only that Mine-Mill International President Robinson had such an apparently close contact with the Communist Party officer in charge of labor union activities but also that Robinson took this Mine-Mill problem to him.

49 (b) In early 1939, Rasmussen was made an International representative in Mine-Mill; later in the year he was elected a member of the International Executive Board as the member for District 2 and took office in February of 1940. (Tr. 159) Immediately following the first board meeting which he attended, he was called into President Robinson's office and "quite strongly" advised by Robinson to line up with the "progressive forces" on the Executive Board in opposition to what Robinson called the "reactionaries." (Tr. 160.) In a later conversation it developed that Robinson included as "reactionaries" those who were complaining about sending into Mine-Mill districts as

organizers individuals suspected of being out and out Communists. (Tr. 163-171)

(c) Prior to the Union convention in September of 1941, the Union policy was to employ only members of the Union as International representatives and for the President to announce the appointments at Board meetings for Board approval. (Tr. 188-189) For several months this had not been done. (*id.*) There were a number of International representatives put on the payrolls who were not members of the Union at all, and they were put on between Board meetings by means of the President sending a letter to the Board Members outlining the qualifications in very glowing terms and asking for a vote by mail. (Tr. 190) Those whom Rasmussen could recall as having been hired in this manner were Alan McNeil, Howard Lee, William Gately, Don Harris, Jack Flaherty, George Knott, and Howard Goddard. It has been found, *supra*, that each of these was a member of the Communist Party. Approval of these individuals was by bare majority of the Executive Board and without knowing who the appointees were. (Tr. 190-191)¹

(d) An effort was made by President Robinson to have the convention that was held in September of 1941 change the Union Constitution to permit the appointment of organizers from outside the Union but this was defeated. (Rasmussen, Tr. 217-218)

(e) At the 1942 convention, Mine-Mill absorbed by merger the National Association of Die Casters although many Mine-Mill officials, comprising the anti-Robinson group, were opposed to the merger. (Rasmussen Tr. 224-5) The N.A.D.C. became the Casting Division of Mine-Mill; Eddie Cheyfitz, the N.A.D.C. Executive Secretary, became

¹ It is to be noted that Howard Lee remained a staff member of the International until December 31, 1949; William Gately until March 31, 1960; Don Harris until July 15, 1948; Jack Flaherty until March 20, 1950; George Knott until April 15, 1949; and Howard Goddard until May 31, 1953. (M. M. Ex. 156)

Mine-Mill Board Member for the Casting Division; and various N.A.D.C. International representatives got 50 the same assignment in Mine-Mill. (Tr. 224-226)

Those so identified on the record were Alex Balint, Pete Zvara, James Pinta, Herman Clott, Kenneth Eckert, Al Skinner, and Irving Dichter. (Tr. 225-226) Eckert, Skinner, and Dichter have been found *supra* to have been members of the Communist Party. Eckert, Skinner, and Dichter became top officials in the International and Skinner and Dichter remained such at the time of the hearing (*supra*).

(f) During 1942 a serious conflict and dispute developed involving two factions on the International staff in Connecticut; one group was anti-Robinson and charged the other, a pro-Robinson group, with being Communists; the pro-Robinson group in turn charged the anti-Robinson faction with being union busters. (Davidson, Tr. 580-85; Rasmussen, Tr. 240-255) Following investigations of this, in January of 1943, there was a meeting of the International Executive Board held in Pittsburgh, Pennsylvania, together with representatives of the C.I.O. (Rasmussen, Tr. 258-59)¹ The pro-Robinson faction on the International Executive Board at this time consisted of Reid Robinson, Chase Powers of District 7, Homer Wilson of District 5, and Robert Carlin of then District 8. (Tr. 257) The anti-Robinson faction on the Board were James Leary, Secretary-Treasurer, Ora Wilson, Vice President, Rasmussen for District 2, Angelo Verdu for District 3, Thomas Murray for

¹ In late 1942, Robinson sent Rasmussen to Connecticut to investigate the difficulties and attempt to straighten them out. Rasmussen found that part of the conflict was brought about by a series of schools or classes on how to detect and deal with Communism in the Union taught by a Father Donelly, which was strongly opposed and criticized by the pro-Robinson faction and the subject of a great deal of interest by the anti-Robinson faction. Rasmussen found and reported to Robinson that Communism was the main issue in the controversy in Connecticut and the situation would never be cleared up unless something was done about that issue. Robinson's reaction was merely that he was sorry Rasmussen (and Ora Wilson who agreed with Rasmussen) had decided to oppose him in his efforts to build the union. (Tr. 226-255)

District 1, Gobel Cravens for District 4, and Elmer Clark for the then Casting Division. (Tr. 257) Also in attendance at the Pittsburgh meeting were a number of the pro-Robinson International representatives including Al Skinner, Jack Flaherty, Irving Dichter, and Lowell Hollenbeck. (Tr. 258)

(g) At this Pittsburgh meeting, Mine-Mill President Robinson belittled the proposition that there was anything wrong with the Union; he took the position that there were merely some disgruntled people who were political opportunists and were causing the trouble. (Rasmussen, Tr. 259) C.I.O. President Murray expressed himself differently, agreeing with Rasmussen that the Communist Party seemed determined to dominate Mine-Mill and to take it over and control it, and that this was the cause of the difficulties and most of the dissension in the Union. (Tr. 260-262) Murray remarked that "If you have a cancer on your hand you had better cut it out before it destroys your entire body." (Tr. 262.) Murray offered the services of the C.I.O. to help with the problem. (Tr. 261-262) Robinson was against this.

51 (h) Having a majority on the Executive Board, the anti-Robinson faction was successful: in getting a resolution adopted declaring a state of emergency in District 6 and asking the C.I.O. to appoint an administrator; in declaring the recent election of the Executive Board Member for that District null and void; and, in going ahead with a program to discharge certain of the personnel of the pro-Robinson faction. (Tr. 263-264) Robinson declared the actions taken were reprehensible and would go down as a black page in the history of the Union. (Tr. 265) Actually discharged were Jack Flaherty, Lowell Hollenbeck, Henry Horowitz, John Lackner, Ruth Lloyd, and Jesse Van Camp.¹ (Tr. 265)

¹ The pro-Robinson group subsequently referred to this as "the Pittsburgh Purge."

(i) Petitioner's witness Davidson was assigned by the C.I.O. as administrator for Mine-Mill District 6 (Tr. 69-71) which the President of the C.I.O. called a "Commie mess." (Tr. 618.) Mine-Mill representatives Horowitz, Quill, Skinner, and Lloyd refused to assist Davidson in getting the records from the Mine-Mill office in Waterbury, Connecticut; Davidson finally got into the office with the aid of a locksmith and found a bundle of Daily Workers in one corner of the room. (Tr. 576-79) Davidson succeeded in turning the District into a functioning organization and then recommended to the Mine-Mill International Executive Board the election of a Board member for the District; the Board approved; an election was held and John Manowski was elected. (Tr. 595-600)

(j) In April of 1943, International Vice President Ora Wilson, who was on the anti-Robinson faction, died. (Rasmussen, Tr. 269) A meeting of the International Executive Board was held in Cleveland, Ohio, the following May. (Tr. 271) Robinson named Rasmussen as Vice President and this was approved by the Board. (Tr. 272) Robinson then named Orville Larson to take Rasmussen's place as Board member for District 2 but this was defeated by a vote of about 7 to 4. (Tr. 272) After much discussion and maneuvering, Dan Edwards, who was recommended by Rasmussen, was approved for District 2. (Tr. 273) The pro-Robinson faction subsequently referred to Rasmussen's appointment as "the Cleveland Calamity." (Tr. 273.)

(k) As the result of elections in 1944, and a resignation in 1945, the composition of the International Executive Board changed from a majority in the anti-Robinson faction to a majority in the pro-Robinson faction at the beginning of the year 1946. (Rasmussen, Tr. 274-277)

(m) During 1946, and before the convention was held that year, a dispute arose on the International Executive Board over the question whether Communists should be allowed to hold office in the Union. (M. M. Ex. 73, pp. 9-12)

Board Member Mankowski voiced the firm opinion "that
 52 Union." (M. M. Ex. 73, p. 9.) Board Member Powers
 accused Mankowski of wanting to use Hitler tactics,
 and voiced opposition to any resolution barring Com-
 munists from holding office in the Union. (*id.*, p. 10) Presi-
 dent Robinson also opposed such a resolution. (*id.*) He
 spoke favorably of the good work done by Communists in
 labor unions for the rank and file workers; he placed the
 issue on an International basis and asked how he could
 wholeheartedly support a world workers' movement if his
 own organization at the same time was saying that Com-
 munists could not hold office. (*id.*, p. 11) In effect, Robinson
 said that if they were to have a democratic organization it
 was necessary to let Communists hold office if elected.

(n) The Mine-Mill convention in 1946 was held in Cleve-
 land, Ohio, on September 16 to 21. (M. M., Ex. 5) Com-
 munism in the Union was a substantial issue at the conven-
 tion (see below). In the order of their occurrences at the
 convention, the following were among the things that took
 place:

(1) Paul Robeson was introduced as a speaker and
 spoke glowingly of the Soviet Union and the Com-
 munists in France, Czechoslovakia, Yugoslavia, Po-
 land, Denmark, and China and elsewhere (M. M. Ex. 5,
 p. 70).

(2) The policy and program proposed by the Execu-
 tive Board was presented which included: a policy that
 race, creed, color, sex or political belief should not be
 reason to restrict or affect any member's status; a
 policy to "welcome assistance and support from *every*
 organization devoted to serving the welfare of the
 working class of people"; and, a policy that member-
 ship in any other organization should not affect the
 rights and privileges in Mine-Mill of the members of
 other organizations (*ib.*, p. 131, emphasis in text).
 These matters were the subject of considerable animos-
 ity at the time of their adoption by the Executive Board
 (see "(m)", above).

(3) The anti-Robinson group made an effort to change the Union constitution so as to bar Communist Party members from holding office, and there was considerable debate. (Rasmussen, Tr. 313-315; Bush, Tr. 2604-2606; M. M. Ex. 5, pp. 372-422) Delegate John Driscoll introduced a resolution to this effect which contained: "We object to Union officials using their position in the Union to advance the interests of the Communist Party. . . ." (M. M. Ex. 5, p. 373). Some delegates admitted that they were Communists.

Finally, Driscoll summed up in favor of barring
53 Communists from Union office, and President

Robinson summed up in opposition to such a provision (M. M. Ex. 5, pp. 397-407). As he did at the earlier meeting of the Executive Board (*supra*) Robinson stated that the labor organizations that had Communists as their leaders had done the most good in getting wage increases and other benefits for the workers; (p. 403) he said that a provision barring Communists from office would serve as a blackball; and, he made a personal attack upon Driscoll (who offered the resolution to bar Communists from office). By a close vote the resolution was lost. (Rasmussen, Tr. 316-317) The remarks made by President Robinson must be said to evidence an affinity on his part for having Communists in Mine-Mill.

(c) The nominations at the 1946 convention, and the subsequent elections, resulted in an International Executive Board composed of only three members in the anti-Robinson faction (Moyer, Secretary; Verdu, District 3; and Mankowski, District 6) and nine in the pro-Robinson faction (Robinson, President; Maurice Travis, Vice President; Mason, District 1; Larson, District 2; Jesse Van Camp, District 4; H. Wilson, District 5; Powers, District 7; Carlin, District 8; and Eckert, Casting Division). (Rasmussen, Tr. 310-312; M. M. Ex. 120, pp. 244-51) In addition, pursuant to action taken at the convention that resulted in creating the office of Eastern Vice President, Homer Wilson was appointed Eastern Vice President and Charles Wilson to take Homer Wilson's place as Board Member for District 5.

This added another person to the pro-Robinson faction on the Board.

(p) Immediately after the installation of new officers in 1946 a secession movement started in Connecticut led by Driscoll, Mankowski, and others. (H. Wilson, Tr. 785; Stern, Tr. 6921) Petitioner's witness H. Wilson was assigned by President Robinson to be in charge of the International's efforts to stop the secession movement and to conduct a campaign on behalf of Mine-Mill. (Tr. 786) Maurice Travis was in charge of obtaining organizers to help with the campaign. (Tr. 786) Among others that he sent to Connecticut, Travis hired back Horowitz, Flaherty, and Feldman, who had previously been objected to in Connecticut as Communist Party members and who had been fired in the "Pittsburgh Purge." (Tr. 787; *supra*). Irving Dichter and Albert Pezzati were also working in Connecticut at the time. (Tr. 788) Homer Wilson testified as follows concerning those sent to Connecticut to work as Mine-Mill organizers in connection with the secession movement: (Tr. 792)

54 A. ... I didn't approve of the way we were going about the organizational attempt to stop the secession.

For instance, the whole idea back of the secession movement that they made public was their desire to get out from under the Communist dominated organization, the Communist organizers.

It seemed that all of these organizers that Travis could borrow throughout the international union, every one he borrowed was a good party man or somebody who had been branded as a party member at least, and that just added oil to the fire in Connecticut from the rank and file, and gave the secession more ammunition..., and I tried to get Travis to just bring in plain old rank and file workers to do the job.

* * * * *

Q. Did Travis make any comments on your proposal?

A. He sure did. He said these guys get in there and they had forgotten more about the class struggle

than me or any of them rank and file guys would ever know. And that he was going to have competent people in there. (Tr. 792.)

(q) Wilson subsequently had another conversation with Travis about the organizers who had been selected to work in the campaign. (Tr. 794) Travis told Wilson that the Communist Party had organized Mine-Mill in the first place and that Wilson could either go along with the Party or get out. (Tr. 794)

(r) As a result of the secession movement in Connecticut a number of locals left Mine-Mill and the membership in Connecticut dropped from around 20,000 to around 10,000. (H. Wilson, Tr. 790) The Connecticut secession movement spread to the midwest in District 3 under Board Member Verdu, and that secession also involved charges of Communism. (Stern, Tr. 6921)

(s) While the secession movements were going on Reid Robinson resigned as President and Maurice Travis was designated by the Executive Board to take over the position. (M. M. Ex. 79, pp. 26, 37, 38)

55 *The Period from Robinson's Resignation Until
Expulsion from the C.I.O. in February 1950*

103. Mine-Mill asked the C.I.O. to intervene to stop the secession movement and the opposition also asked the C.I.O. to step into the picture; a C.I.O. committee was set up to investigate the situation. (Stern, Tr. 6925-26; M. M. Exs. 79, p. 61 and M. M. Ex. 80, p. 6; A. G. Ex. 115)

104. The C.I.O. committee, in May of 1947, issued a report. (A. G. Ex. 115) The report stated that the alleged reasons for the withdrawal of practically one-fourth of the dues paying membership of Mine-Mill were stated by their representatives to have been the conduct and results of the recent International election, and domination and interference by interests outside the International. (p. 6) The report further stated that the officers of the International claimed the withdrawals were due to the activities of cer-

tain individuals who were self-seeking disruptionists. (p. 6) The report found, among other things, that Maurice Travis was continuously dealing with representatives of the Communist Party in shaping the policy of the International; also, that field men who had been discharged from other C.I.O. Unions for attempting to organize workers in the Communist Party were hired by Mine-Mill. (p. 10) The report recommended that Mine-Mill either have Maurice Travis resign or that he be removed, and that an administrator be appointed by President Murray of the C.I.O. to conduct the affairs of Mine-Mill for at least six months. (p. 14)

105. The Mine-Mill Executive Board rejected the proposals of the C.I.O. investigating committee and arranged for a special election of International officers. (M. M. Ex. 80, p. 10) Nominations were made at the 1947 convention (M. M. Ex. 120, pp. 280-308) and the subsequent referendum vote resulted in the election of John Clark, President; Reid Robinson, Eastern Vice President; Wesley Madill, Western Vice President; Maurice Travis, Secretary-Treasurer; William Mason, District 1; Orville Larson, District 2; Jesse Van Camp, District 3; Leonard Douglas, District 4; Charles Wilson, District 5; Albert Pezzati, District 6; Chase Powers, District 7; Robert Carlin, District 8; and, Kenneth Eckert, Casting Division. (A. G. Ex. 108)

106. The 1947 convention adopted a policy of noncompliance with the provisions of the Taft-Hartley Act, which provision required the officers of labor unions to file affidavits that they were not members of the Communist Party (M. M. Ex. 120, pp. 197-198; Stern, Tr. 6642)¹ This re-

¹ There was considerable evidence submitted on the issue of the Taft-Hartley Act, the name commonly used for the Labor Management Relations Act of 1947, which provided in section 9(h) that in order for a union to invoke the machinery of the National Labor Relations Board each union officer must have submitted a non-Communist affidavit. It was stipulated by counsel and the record otherwise shows that labor in general, including the C.I.O., was opposed to the Taft-Hartley Act and the filing requirements. (*E.g.*, Tr. 8064.)

sulted in agitation among some of the locals for a change in policy and for compliance. (Stern, Tr. 6929-30)

56 107. The Die Casting Council adopted a resolution urging the International to reconsider its action and to comply with the non-Communist affidavit provision of the Taft-Hartley Act. (Stern, Tr. 6931-32; M. M. Ex. 85, p. 2) This was discussed at a meeting of the International Board held in April of 1948. (M. M. Ex. 85) Vice President Madill was in favor of compliance (*id.* p. 4) Board Member Eckert defended his action as the one who had proposed the resolution for compliance to the Die Casting Division. (*id.* p. 3, 5) Dennis, Dichter, Pezzati, and Skinner supported noncompliance and condemned Eckert. (*id.* p. 4) Positions pro and con were read from various local unions. (*id.* p. 5) A motion was made by Travis, seconded by Mason, Van Camp, Larson, Powers, and Pezzati that the Executive Board reaffirm opposition to filing the non-Communist affidavits. (*id.* p. 6) The motion was carried with Eckert and Madill dissenting. (*id.* p. 7)

108. In the summer of 1948, petitioner's witness Kirby attended a conference in Denver held at the request of various local unions to ask the International Board to comply with the Taft-Hartley affidavit provision; Madill, Eckert, and Wilson led the fight for compliance; Van Camp, Pezzati, Dichter, Travis and others fought against compliance; the result was decision not to comply. (Tr. 2913-14)

109. Following the action of the Executive Board in adhering to a policy of noncompliance with the Taft-Hartley affidavit requirements, Eckert led a secession movement among the locals in the Die Casting Division and several of the locals withdrew from Mine-Mill. (Stern, Tr. 6933-36) Also, Madill led a secession movement among the locals in the State of Utah and certain of the locals there withdrew from Mine-Mill. (Stern, Tr. 6934-36)

110. At a Board meeting on September 10, 1948, Reid Robinson nominated Irving Dichter to be Board Member

for the Casting Division to take the place of Eckert, and Dichter was elected by acclamation. (M. M. Ex. 87, p. 3) At a meeting on September 22, 1948, Reid Robinson nominated Orville Larson to take the place of Madill as Western Vice President and this was carried by acclamation. (*id.* p. 17) Thus all opposition was eliminated on the Executive Board.

111. At the 1948 convention, September 13-17, a resolution was presented to work for repeal of the Taft-Hartley Act, to refuse to submit to any part of the Act, and calling the non-Communist affidavit requirement of the Act "a brazen discriminatory and unwarranted interference with our right to choose our own leadership and to determine our own policies." (M. M. Ex. 121, p. 115.) A minority report of the resolutions committee proposed that the question of Taft-Hartley compliance be placed before the entire membership for determination by referendum vote. (*id.*) President Clark, Secretary-Treasurer Travis, and Resolution Committee Chairman Pezzati, among others, insisted that the merits of Taft-Hartley were the subject of discussion and refused to discuss, although requested
57 by the minority, the question whether compliance should be voted upon by the entire membership in a referendum vote. (*id.* pp. 116-117) The minority effort to submit the question of Taft-Hartley compliance was defeated and the resolution was adopted not to comply with Taft-Hartley. (*id.* 151, 152)

112. At the 1948 convention, on motion of Albert Pezzati, a resolution was adopted condemning both C.I.O. Secretary-Treasurer James B. Carey and an article he had written entitled "We've Got the Reds on the Run." (M. M. Ex. 121, p. 165.) This convention also, on motion of Pezzati, adopted a resolution stripping Eckert and Madill of every right and privilege in Mine-Mill. (p. 158) On motion of Irving Dichter, the convention adopted a resolution calling for putting an end to the United States House of Representatives Committee on Un-American Activities. (p. 223)

The convention also adopted a resolution critical of the Truman Doctrine, the Marshall Plan, and "American imperialism." (p. 224.)

113. Between the 1948 and 1949 conventions, the International Executive Board changed its policy and, at a meeting on July 20, 1949, voted to comply with the non-Communist affidavit provision of the Taft-Hartley Act. (Bush, Tr. 2618-19; Kirby, Tr. 2925-26; M. M. Ex. 90, p. 4) A Statement of the Executive Board on the Taft-Hartley affidavits was presented by President Clark and approved on motion of Vice President Reid Robinson. (M. M. Ex. 90, pp. 2-4) Included in the Statement was:

In signing the affidavits we want to make it very clear that we are not succumbing to the hysteria of red-baiting that has become so popular among some labor leaders. We condemn the present anti-Communist crusade as a violent attack on democracy. We renew our pledge to carry out the Mine-Mill constitutional provision for equality of membership, regardless of race, creed, national origin or political faith. (M. M. Ex. 90, p. 4.)

114. Following this action of the Executive Board, there was published in the Union newspaper a statement of Maurice Travis that he had resigned his membership in the Communist Party in order to sign the non-Communist affidavit required under the Taft-Hartley Act. (A. G. Ex. 47, *supra*). While in Chicago for the 1949 Mine-Mill convention, petitioner's witness Kirby had a conversation with Travis during which Travis told Kirby that if Kirby would "quit giving us the opposition and get on our side" he would be made an Executive Board member of the district. (Tr. 2932.) Kirby refused and asked Travis how it was possible for Travis to sign the non-Communist affidavit and

58 at the same time come out with a statement that he had done so with reluctance and indignation in order to remain an officer in the Union. (Tr. 2933-34) Travis replied:

... we have been counseled and counsel tells us that the affidavit doesn't say we have not been a member or we might become a member of the Communist Party, but it says we are not now a member of the Communist Party, ... When I sign it, I say I am not now a member of the Communist Party. I have resigned my Party membership, which I made a statement to the union about. (Tr. 2934.)

115. In March of 1954, petitioner's witness Gardner, then a member of the Communist Party, discussed the signing of the Taft-Hartley affidavits with Albert Pezzati; Pezzati told Gardner he felt the Communist Party was wrong in the beginning in refusing to allow union leaders to sign the affidavits, and that the Party decision to let the Party members in the Union sign came late after the Party-led unions had been seriously weakened. (Tr. 4921-4922)

116. A resolution was presented at the 1949 convention to confirm the action of the Executive Board on the change in policy on Taft-Hartley compliance. (Kirby, Tr. 2929; M. M. Ex. 122; pp. 163-174) Petitioner's witness Kirby, a delegate to the convention, opposed the resolution on the grounds the rank and file membership should decide the matter of compliance or noncompliance. (Tr. 2930) He complained that the Executive Board acted "unilaterally and arbitrarily" in signing the affidavits after the previous convention had voted not to comply, and that the arbitrary signing was just another example of policy emanating from the top rather than "from the grass roots or the working man" who should establish policy. (Tr. 2930.) However, the action of the Executive Board was approved. (M. M. Ex. 122, p. 174)

117. There were a number of other occurrences at the 1949 convention which were related in some way or another to Communism. A resolution, on motion of Powers, was adopted calling, among other things, for abolishing the House Committee on Un-American Activities and for repeal of the Smith Act of 1940. (M. M. Ex. 122, p. 125)

A resolution was defeated which would have changed the words "class struggle" in the Union Constitution to "economic struggle. (p. 209)"¹ A resolution was passed which, among other things, called upon the United States to encourage trade with Eastern Europe, Russia and China. (pp. 213-218) During the debates on this resolution, Irving

59 Dichter spoke in high praise of the Soviet Union and concluded with the statement that on one side of the world stand the Eastern European democracies, the Chinese people, and the Soviet Union—fighting to have a free life, a decent life, a life without oppression; on the other side (said Dichter) stand the employers, the monopolists, and the fascists. (pp. 214-215) Robinson also spoke quite favorably of the Soviet Union, saying that they have democracy, freedom of expression, and the right to strike although because there is no "capitalistic boss with whom they have to negotiate . . . it becomes unnecessary for them to strike." (M. M. Ex. 122, p. 215.)

118. Continuing with the occurrences at the 1949 convention—Alton Lawrence commented on the question: "Can our union afford the luxury of tolerating Communists in its rank or among its officials?" (M. M. Ex. 122, pp. 179-180.) His answer was that Mine-Mill cannot curtail the democratic rights of freedom of political belief. (*id.*)

119. Finally with respect to significant occurrences at the 1949 convention, a substantial issue arose over the relationship between Mine-Mill and the C.I.O. (M. M. Ex. 122, pp. 129-152). President Clark, Pezzati, Robinson, Dichter, and others spoke strongly in favor of Mine-Mill asserting autonomy or "the right of self-government" and refusing to abide by a C.I.O. requirement that all affiliated International Unions enforce and carry out the C.I.O. constitution and instructions of C.I.O. conventions (*id.*, p. 255). A

¹ Dirdak explained the purpose as being to eliminate one of the things which caused people to identify Mine-Mill with the Communist Party. (M. M. Ex. 122, p. 210)

minority report was submitted by Dirdak aimed at practicing real democracy by abiding by the majority vote of C.I.O. since Mine-Mill was a member (*id.*, pp. 130-132). In urging adoption of the "autonomy" policy, Irving Dichter stated that there was a move on to oust Mine-Mill from the C.I.O. and that Mine-Mill should remain united behind the Mine-Mill leadership in support of the principles Mine-Mill stood for (*id.*, p. 147).¹

120. Petitioner's witness Everingham was chosen as one of the Mine-Mill delegates to the C.I.O. convention held a few months after the 1949 Mine-Mill convention. (Tr. 2686-87) President Clark and Orville Larson reported at a meeting of the Mine-Mill delegates that C.I.O. President Murray had stated that the Mine-Mill delegates would be seated at the C.I.O. convention but Mine-Mill would have to get rid of Maurice Travis and Reid Robinson as the first step in cleaning up the Union. (Tr. 2690)

60 121. At the C.I.O. convention in 1949, the C.I.O. Constitution was amended so as to bar members of the Communist Party from holding positions of leadership in any affiliate union. (Stern, Tr. 8231, M. M. Ex. 92, p. 1-2) The constitutional amendments adopted by the C.I.O. convention were:

- (A) PAGE 10: Article IV concerning Officers and Executive Board is amended by the insertion of a new Section 4 which reads as follows: "Section 4. No individual shall be eligible to serve either as an officer or as a member of the Executive Board who is a member of the Communist Party, any fascist organization, or other totalitarian movement, or who consistently pursues policies and activities directed toward the achievement of the program or the purposes of the Communist Party, any fascist organization, or other totalitarian move-

¹ In this general connection, the record shows that in 1946 the C.I.O. passed a resolution rejecting and resenting attempts by outside organizations to control the affairs of any labor union. (Stern, Tr. 8230)

ment, rather than the objectives and policies set forth in the constitution of the CIO."

* * * * *

PAGE 15: 1. A new Section 8 reads as follows: "Section 8. The Executive Board shall have the further power to refuse to seat or to remove from office any member of the Executive Board, or to remove from office any officer, who is found by the Board, by a two-thirds vote after notice and hearing, to be ineligible to serve under the provisions of Article IV, Section 4. Any action of the Executive Board under this section may be appealed to the Convention, provided, however, that such action shall be effective when taken and shall remain in full force and effect pending the appeal."

* * * * *

PAGE 16: 2. A new Section 10, which reads as follows: "Section 10. The Executive Board shall have the further power, upon a two-thirds vote, to revoke the Certificate of Affiliation of or to expel or to take any other appropriate action against any national or international union or organization committee the policies and activities of which are consistently directed toward the achievement of the program or the purposes of the Communist Party, any fascist organization, or other totalitarian movement, rather than the objectives and policies set forth in the constitution of the CIO. Any action of the Executive Board under this section may be appealed to the Convention, provided, however, that such action shall be effective when taken and shall remain in full force and effect pending the appeal." (M. M. Ex. 92.)

122. In November of 1949, charges were filed under the above amendments with the National C.I.O. Executive Board against Mine-Mill President Clark, who was a member of the C.I.O. Executive Board, and charges were also filed against the Mine-Mill International Union. (Stern, Tr. 8139-40; M. M. Ex. 92, p. 2)¹ The charges stated that the

¹ Charges were also filed against certain other affiliated unions. (A. G. Ex. 116)

policies and activities of Mine-Mill were consistently directed toward the achievement of a program of the purposes of the Communist Party rather than the objectives and purposes set forth in the Constitution of the C.I.O. (Stern, Tr. 8145; A. G. Ex. 116) Hearings were held in January of 1950 before a C.I.O. committee during which Mine-Mill presented rebuttal witnesses and a written statement. (Stern, Tr. 8141-43; M. M. Exs. 198 and 199) The conclusion of the C.I.O. committee was:²

For the reasons stated, therefore, and on the basis of all the evidence presented to it, the committee unanimously concludes that the policies and activities of Mine, Mill are consistently directed toward the achievement of the program and the purposes of the Communist Party rather than the objectives and policies set forth in the CIO constitution. The committee recommends that the executive board exercise the powers granted to it by article VI, section 10, of the CIO constitution and, by virtue of those powers, revoke the certificate of affiliation heretofore granted to the Mine, Mill and Smelter Workers and expel it from the CIO. (A. G. Ex. 116, p. 22.)

123. Mine-Mill was in fact expelled from the C.I.O. on February 20, 1950 (Resp. Answer; Stern, Tr. 3152, 8240).

62 *The Period from Expulsion from the
C.I.O. to the Time of the Hearing*

124. As will appear, Communism remained an issue in Mine-Mill after the Union had been expelled from the C.I.O., and the efforts of the anti-Communists were consistently defeated.

125. Petitioner's witness Dirdak who had carried on an anti-Communist battle at the 1949 Mine-Mill convention was

² The report of the C.I.O. committee was received in evidence, without objection, along with the transcript of the C.I.O. hearings, as proof that these things happened but not as proof of the truth of anything contained in the documents. (See Tr. 8144; 8156-57) They have been so considered.

placed on trial by his local on charges of conduct unbecoming a Union officer, taking part in the publication of a newspaper critical of the International, and treason. (Tr. 2301-2305) Mine-Mill International representative Howard Goddard, found *supra* to have been a member of the Communist Party, served as prosecutor. (Tr. 2304) The charge of treasonable conduct was based upon the positions taken by Dirdak at the convention. (Tr. 2304) As a result of the charges and trial, Dirdak was expelled (Tr. 2304) Thereafter, the trial of Dirdak became an issue in subsequent election contests with the result that in 1950 the West End branch of his local went with the Chemical Workers, A.F.L., and, in 1951, the Trona branch went with the United Mine Workers. (Tr. 2306-2310)

126. Petitioner's witness Everingham was present at a meeting in early 1950, of a Coordinating Council of Mine-Mill Locals 14 and 18 at which a motion was introduced asking for the resignation of Maurice Travis and Reid Robinson for the good of the Union, so that it would not be expelled from the C.I.O. (Tr. 2693-94) Maurice Travis was present at the meeting. (Tr. 2694) After the meeting, Everingham and Rudy Hanson and Travis rode home together in an automobile (Tr. 2695) Everingham commented to Travis that the men were very much concerned about the charges of Communism among the officers of the Union and that this was doing the Union damage. (Tr. 2695) Travis replied, referring to the possible expulsion from the C.I.O., that there was nothing in the minds of the men that a few pennies gained for them in negotiations would not cure and make them forget. (Tr. 2696) Around the middle of the year 1950, Everingham resigned his position as an officer of his local in order to be able to be more outspoken against those whom he believed to be Communists within the Union. (Tr. 2700-01) He was subsequently elected as a delegate to the annual convention held in September of 1950. (Tr. 2701)

127. At the 1950 convention, a resolution was offered on "Peace" which criticized the foreign policy of the United States, particularly the Marshall Plan, the construction and storing of atomic bombs, and United States participation in the Korean War. (Tr. 2702) Everingham spoke at the convention in opposition to the resolution and said that the policy put forward in the resolution was exactly as that put forward by the Daily Worker. (Tr. 2703; A. G. Ex. 36, pp. 102-103) At the next meeting of his local attended by Everingham after the convention a man by the name of Halvorson introduced a motion castigating Everingham for his action at the convention. (Tr. 2707) This motion was defeated but about nine months later Everingham was charged with and tried by his local for conduct unbecoming a Union member. (Tr. 2708) At the trial, Halvorson was accused by Everingham of being a member of the Communist Party and first denied it but upon being told by Everingham that Everingham knew his Party book number, Halvorson admitted that he had once belonged to the Communist Party. (Tr. 2710) Everingham was expelled from the local union and from the International. (Tr. 2710)

128. At the 1950 convention, a speaker was introduced who said, among other things, that fear of Communists evidenced unsound minds, that loyalty investigations were witch hunts, and that the war budget enacted by Congress was a fear budget. (M. M. Ex. 123, p. 34-35) President Clark commented that every word uttered had been along the lines of the thinking of Mine-Mill. (p. 37)

129. A resolution was introduced at the 1950 convention reciting that no International officer should belong to the Communist Party and proposing that Maurice Travis resign as Secretary-Treasurer. (M. M. Ex. 123, p. 96) Non-concurrence was moved by Pezzati and the resolution was defeated. (*id.*) Various resolutions were offered to bar members, ex-members, or sympathizers of the Communist

Party from holding any office or job in the International Union or any local union. (p. 129) Powers moved nonconcurrency and the resolutions were defeated. (p. 130)

130. At the 1951 convention, delegate John Blackwell made a report on his recent visit to the Soviet Union and other countries as a member of an American trade union delegation. (M. M. Ex. 124, pp. 97-99, 107-113) Most of his report was devoted to praising the Soviet Union in glowing terms. (*id.*) The 1951 convention passed a resolution for repeal of the Smith Act (pp. 149 and 150) and a resolution which included:

We should work closely with such organizations as the National Association for Advancement of Colored People, the Mexican-American National Association, the National Negro Labor Council, and the Civil Right Congress, toward an end to brutality and terror, defense of frameup victims, and toward full first-class citizenship for all, regardless of color, national origin, sex or political belief.¹ (M. M. Ex. 124, p. 151.)

64 131. Petitioner's witness McLean ran for the office of International Secretary-Treasurer of Mine-Mill in 1951 and 1953 against Maurice Travis. (Tr. 3163) McLean campaigned on an anti-Communist platform on a slate in opposition to the policies on International political issues that had been followed by the incumbent International officers. (Tr. 3167-68) He was handicapped in his campaign by the failure of the International to publish the results of the election of officers of the locals, and by the absence of a directory of the locals. (Tr. 3164-67)

132. The Montana locals proposed resolutions at the 1952 convention: to resume the publication in detail of the votes of individual locals on candidates and issues; (M. M.

¹ In this connection, see the findings *supra* on instructions given Gardner to work closely with the Negro Labor Council and the Civil Rights Congress when he was hired as an International representative of Mine-Mill.

Ex. 125, pp. 59-63) and, that the International reestablish the practice of providing a list of the local unions. (pp. 160-161) Alton Lawrence spoke in opposition to publishing the election results, maintaining that to do so would aid the "enemies" of the Union, particularly in raiding. (M. M. Ex. 125, p. 60.) Chase Powers moved that the matter of publishing a list of the locals be referred to the International Board. (p. 161) This was passed and the resolution for publishing election returns was defeated. (pp. 161 and 163)

133. From McLean's testimony it seems that not only were new candidates for International offices handicapped by the absence of this information, but the incumbent officers running for reelection had an advantage since the information was available to them and this tended to perpetuate the incumbents in office. (Tr. 3163-67)

134. Among other resolutions passed at the 1952 convention were: a master resolution condemning the McCarran Committee, the McCarran Act, the Smith Act, the Federal Bureau of Investigation, and the Government of Spain; (M. M. Ex. 125, pp. 73-82) a resolution for a cease fire in Korea; (pp. 131-135) and, a resolution commending Clark, Orville Larson, Charles Wilson, Maurice Travis, Graham Dolan, and Al Skinner. (p. 44)

135. Resolutions opposing the foreign policies of the United States and opposing the domestic policies of the Government in the field of Communism or subversion, such as those set forth above and also set forth in the findings on earlier conventions, have been consistent occurrences at the Mine-Mill conventions. Similarly, the reports and declarations of certain of the International officers have consistently, at the various conventions, been quite critical of the Government of the United States, especially the foreign policies and the domestic program in the field of Communism. These matters and their relevancy to the ultimate issues in this proceeding are considered in the

following section headed "Policies and Programs of Respondent."

65 136. Around June of 1953, petitioner's witness Gardner, a Mine-Mill International representative and member of the Communist Party, was transferred by Mine-Mill from Buffalo, New York, to the Coeur d'Alene District in Idaho. (Tr. 4892) Gardner stopped enroute in Denver where the International headquarters were located. (Tr. 4893) While in Denver he met with Mine-Mill Comptroller Harold Sanderson, identified in the record as a member of the Communist Party. (Tr. 4894) The conversation was as follows: (Tr. 4894-95)

Sanderson told me the union was having a great deal of difficulty in the Coeur d'Alene mining district because of a former international representative against whom charges had been filed with the Idaho State Committee of the Communist Party that should result in his expulsion from the party; that this international representative was leading a factional movement, both within the party and within the union. And he cautioned me that I should be very careful in my work there to remain completely aloof from this factionalism, and that also it would necessitate my remaining completely outside the party organization (sic) there because the factional group under the leadership of this former international representative headed the party faction as well, and that at a time when the air began to clear and when they in the Rocky Mountain region of the Communist Party felt that the time was ripe for me to re-establish my contact with the party, I would be contacted there; that he or somebody else from the international office would contact me prior to that, so that I would know the person contacting me was from the party. (Tr. 4894-4895.)

Sanderson also told Gardner that the name of the International representative was Rudy Hansen, and Sanderson suggested that Gardner see Maurice Travis, the Mine-Mill International Secretary-Treasurer. (Tr. 4895)

137. Gardner went from the meeting with Sanderson to Travis' home. (Tr. 4985) Travis also told Gardner about the factional situation existing in the Coeur d'Alene district, and stated that key Communist Party people in the area were involved in it including Peter Pikarski, a Mine-Mill International representative. (Tr. 4896) Travis, too, cautioned Gardner to remain completely aloof from the factionalism within Mine-Mill and within the Party in Coeur d'Alene. (Tr. 4896)

66 138. A few months after arriving in Coeur d'Alene, Gardner met, in August or September of 1953, on at least two occasions with the International Board Member for District 7, Chase Powers. (Tr. 4896-97) Powers told Gardner that Rudy Hansen and the other International representative in the district and one of the active Communist Party people there were working against Powers in the area. (Tr. 4898-99) Powers also told Gardner that charges had been filed in the Party against Hansen, and Powers asked Gardner to help isolate Hansen from the miners in the area so it would be easier to expel Hansen from the Union. (Tr. 4898) Gardner replied that he certainly would be guided by the position of the International officers who were interested in the expulsion of Hansen from the Communist Party. (Tr. 4899)

139. In late 1953 or early 1954, Gardner attended a meeting in Spokane, Washington, of local Mine-Mill leadership in the Idaho and western-Washington area. (Tr. 4899-4900) While there, Gardner had a conversation with the International Publicity Director, Graham Dolan. (Tr. 4901) Dolan told Gardner that he had filed charges against Rudy Hansen with the State Committee of the Communist Party of Idaho at the instigation of Mine-Mill International officers Sanderson and Travis; (Tr. 4901) also, that one of the charges was that Hansen had taken unilateral action in resigning from Mine-Mill without first consulting the Communist Party organization that operated within the Union,

and that another charge was collaboration by Hansen with William Mason, suspected of being a "traitor to the Mine-Mill and Smelter Workers Union." (Tr. 4902.)

140. At the 1953 convention, the Montana locals again submitted, like they had at the 1952 convention, resolutions aimed at resuming the practice of publishing election returns in the Union paper, and of resuming the practice of publishing a roster of locals. (M. M. Ex. 126, pp. 108-109) These were subsequently defeated and a substitute resolution adopted under which detailed election returns of the International officers would be sent to the financial secretary of each local and to each candidate for International office, following each International referendum. (*id.*, pp. 162-166)

141. The Butte Miners Union submitted a resolution at the 1953 convention as follows:

RESOLVED, that the official Organ of the International Union shall reflect social, economic and political thinking of the membership of our Union and avoid partisan positions on international and political questions. (M. M. Ex. 126, pp. 136 & 137.)

Board Member Mason, who said he had drafted the resolution, spoke in favor of it. (pp. 137-138) He said that by "international political questions" was meant questions that have to do with the cold war, and questions having to do with the assessment of responsibility for peace in the world. (M. M. Ex. 126, p. 137.) He said that "we have yet to see even the faintest criticism of the position of the Soviet Union in our International paper." (*Ib.*) Mason continued with the thought that responsibility for peace "lies in the Kremlin as well as in Washington, D. C." but that the Union paper always pointed to the faults of the United States and never criticized the Soviet Union. (p. 138.) He concluded with "let us not try to outdo the Daily Worker with our International Organ." (p. 138.)

Board Member Pezzati spoke against the resolution. (pp. 138-139) The opening part of his discussion was:

No question, of course, that the employers in this industry would like to have us put out a comic book instead of a newspaper. Especially they would like to have us put out a position to our membership which would in no way conflict with the dominant position taken by practically ninety-nine and nine-tenths of the newspapers of this country. They don't like to have their position challenged. They don't like to have our membership receive information other than that contained in the press dominated and controlled and owned by the big business interests of this country who are down the line against our interests, whether it relates to wages and conditions of work or whether it relates to peace and foreign affairs. The last speaker says that the world is divided on who is responsible for the present state of affairs in the world. Well, America is still part of the world and America is divided on the question, too, and I say that we have got to be partisan. We have got to take our side in this question, too, along with the rest of the American people. . . . (M. M. Ex. 126, pp. 138 & 139.)

Charles McLean spoke in favor of the resolution, stating, among other things, that: "I don't believe that the Union paper is reflecting the views on these International political questions that is the thinking of the majority, the vast majority of the membership of this Union." (p. 140.) Morris Wright, the editor of the paper, commented that at no time has the paper taken positions beyond the official positions adopted in the conventions or *adopted by the Executive Board between conventions*. (p. 141, emphasis added.) The resolution was defeated. (p. 141)

68 142. The 1953 convention passed resolutions condemning various aspects of the foreign policy of the United States, and opposing the domestic actions of the Government in the field of Communism. To illustrate, the report of International President Clark criticized embargo on goods to Russia, Eastern Europe and China (M. M. Ex.

126, p. 246) which was adopted by the convention. (p. 160) Eight printed pages of the Clark report were devoted to an attack on many of the policies and programs of the United States. (pp. 235-242)

143. During the last week of December of 1953, the Butte Local No. 1 of Mine-Mill met and passed a resolution to secede from Mine-Mill and go with the C.I.O. steel workers. (Moralez, Tr. 3467-3468) After this, there was a movement to fight the secession in which petitioner's witness Moralez participated. (Tr. 3469) The International office sent in outside organizers to help fight the secession, and some local people were also put on as temporary organizers. (Tr. 3469)

144. The Butte secession movement lasted until in March of 1954 when an election was held under the National Labor Relations Act. (Moralez, Tr. 3471, 3636) Mine-Mill won the election. (Tr. 3637) During the period of the campaign, Moralez attended at least two Communist Party meetings. (Tr. 3637-38) One was a meeting held at the Royal Motel. (Tr. 3653) Present were Mike Ross, John Hellman (a Party official not in Mine-Mill), Albert Skinner, Cozy Dolan, and Moralez. (Tr. 3654, 3663) The purpose of the meeting was to figure out a way of keeping control of the Mine-Mill locals. (Tr. 3654) Another meeting was held at the Clark Hotel, attended by Louis Johnson, Al Skinner, John Hellman, and Moralez. (Tr. 3638) The secession movement or raid was discussed along with how to control the Union after the election. (Tr. 3639) One point was that it would be necessary to put Communist Party members on the Mine-Mill staff in the area; mention was made of bringing Fred Gardner in to watch over Salvas. (Tr. 3640)

145. The secession movement in Butte and Anaconda (Mine-Mill District 1) was led by the Board Member for the District, William Mason. (Salvas, Tr. 9552) By action of the International Executive Board, Ernest Salvas, a witness for respondent in this proceeding, was appointed to

replace Mason as Board Member for the District. (Tr. 9553-54) It has been found *supra* that the Communist Party believed Salvas to be pro-Communist or at least a person who would go along with the Party people in Mine-Mill. The International representatives sent in by the national officers (Tr. 9555-62) during the National Labor Relations Board election campaign included: Al Skinner, Mike Ross, Maclovio Barraza and Ike Bayliff from District 2; Al Pezzati and Bob Schrank from District 6; Fred Gardner from District 7; and Graham Dolan and Sam Feldman to handle publicity. Harold Wildman, already an International representative in District 1, also participated, and Arthur Moralez was put on the staff on a temporary basis. (Salvas, Tr. 9555-56, 9561) Of these, it has been found *supra* that Skinner, Ross, Barraza, Pezzati, Schrank, Gardner, Dolan, Feldman, Wildman and Moralez were members of the Communist Party.

146. It has been found above that Moralez, Skinner, Dolan and Ross met separately with Communist Party functionary John Hellman to discuss the campaign, and that on another occasion during the campaign Moralez and Skinner met with Party functionaries Louis Johnson and John Hellman.

147. Petitioner's witness Gardner, having been sent to Butte to aid in the N.L.R.B. election campaign, was assigned to a permanent position as an International representative there around March of 1954. (Tr. 4905-07)¹ Peti-

¹ There is conflict between the testimony of Gardner and the testimony of respondent's witness Salvas as to who was responsible for Gardner's assignment. Gardner testified that he had a conversation with Al Skinner, then Mine-Mill Director for District 2, at which Bob Schrank was also present, and that Skinner asked Gardner if he would be willing to come to Butte permanently. (Tr. 4907) Skinner also said to Gardner, according to Gardner's testimony, that Salvas was a weak person and someone had to ride herd on him to make sure that Communist Party policies were carried out in Mine-Mill in that area. (Tr. 4907) Salvas testified that he, himself, recommended Gardner's assignment to Butte, (Tr. 9311-13) and respondent's exhibit 63 (M. M.

tioner's witnesses Gardner and Morales, and respondent's witnesses Salvas and J. P. Mooney were in agreement that Mine-Mill was engaged in a strike in Butte which started in August and ended in October of 1954. (Tr. 4909, 3714, 9325, 9495) All agreed that Gardner was on the negotiating committee and all agreed as to the terms of a settlement agreement that was reported to the membership at a meeting in the Civic Auditorium in Butte, and that the membership voted to accept or ratify the settlement. (Tr. 4910-13, 3722, 4102, 9325-26, 9530-31)

70 148. There were differences in the testimony on certain aspects of the meeting at the Civic Auditorium. The differences included whether Gardner expressed disagreement with the settlement, whether the meeting was calm or loud and hostile, and whether the settlement was considered a good or bad one. The merits of the settlement are not relevant to this proceeding and no useful purpose would be served in detailing the lengthy testimony of the four witnesses. To the extent that the testimony presented by respondent may have been designed to cast doubt upon the overall credibility of Gardner or Morales, this was not done.¹ In fact, there were internal

Ex. 63) indicates that the assignment was approved by the General Executive Board in April of 1954. Gardner was corroborated by petitioner's witness Morales, who testified that he attended a Communist Party meeting at which Al Skinner was present and at which there was specifically discussed the matter of bringing Gardner into Butte to watch over Salvas and to see that he did what was right so far as Communist Party policy was concerned. (Tr. 3655-56) Gardner's testimony in this proceeding was consistent with prior testimony he had given as a witness in an earlier criminal trial. (See Tr. 1731, 1735-37 of M. M. Ex. 62, pp. 1971-72C.) Morales' testimony conforms with a contemporary report he had given to the Federal Bureau of Investigation. (See Tr. 3638-56.) Neither Skinner nor Schrank nor others present at the meetings testified to by Gardner and Morales were called to deny the testimony. It is found that the meetings with Skinner and other Party members took place as Gardner and Morales related.

¹ Much of the testimony given by Salvas and Mooney had a bearing on subjects about which Gardner testified, with the overall and primary purpose of attacking the general credibility of Gardner when coupled

conflicts in the testimony given by each of respondent's own witnesses and conflicts between the two on some aspects of the Civic Auditorium meeting.

149. Both Gardner and Moralez testified to Communist Party meetings held shortly after the 1954 strike settlement, which both attended and at which Communist Party functionary John Hellman and Mine-Mill staff member Dolan were also present. (Tr. 4913-17; 3715; 3733-40; 3748-50) The subject of these meetings was concern over whether there was dissatisfaction among the miners over the strike settlement which might cause their lack of confidence in and support of the Mine-Mill leadership. Communist Party functionary Hellman reprimanded Gardner for not holding meetings of the strikers so they could arrive at collective thinking. (Tr. 4914) Dolan criticized Gardner for his voicing opposition to the settlement since Dolan felt to have done so was dangerous to the Communist Party. (Tr. 4914) Dolan and Hellman upheld the settlement. Hellman said somebody blundered and he was going to get to the bottom of it since he had been around town talking to miners and found they were dissatisfied. (Tr. 3733) Hellman and Dolan instructed Gardner to draft a report on his position during the strike, on the settlement, and regarding the future of Mine-Mill in the Butte area. (Tr. 4915-16) Hellman told Gardner the report would be sent to the Rocky Mountain Region of the Communist Party and that Sanderson and Travis would be furnished a copy of it. (Tr. 4915-16; 3736-39)

150. Moralez and Gardner both testified that Gardner prepared a report and presented it at the next meeting

with matters brought out during the cross-examination of Gardner himself. Salvas and Mooney both testified that Gardner's reputation for truth and veracity in Montana was bad (Tr. 9309-11) and that Gardner was causing dissension within Mine-Mill. (Tr. 9428) On the other hand, in many areas of his testimony Gardner was strongly corroborated by Moralez. Needless to say, where findings are made on the basis of Gardner's testimony, such testimony has been credited.

71 of the Communist Party group, which was held in December of 1954 at Dolan's home. (Tr. 3746-48; 4916-18) Present at the meeting were Party functionaries Hellman, Dolan, Gardner and Moralez. (*id.*) There was a discussion on how to get a copy of the report to Travis, Sanderson, and Communist Party officials, and Dolan was designated to see that it was done. (*id.*)

151. In the early part of 1955, while Gardner, Moralez, J. P. Mooney, and Salvas were still on the Mine-Mill staff in Montana, an issue arose among the members of the Union in the area over Maurice Travis. (*e.g.*, Mooney, Tr. 9500) Travis had been indicted in the fall of 1954 in a Federal District Court on charges of filing a false non-Communist affidavit with the National Labor Relations Board, and thereafter the National Labor Relations Board issued a decertification order against the Union. (*e.g.*, Salvas, Tr. 9396-97) At a meeting of the Butte Local a motion was made to demand the immediate resignation of Travis from his leadership position in the International. (*e.g.*, Gardner, Tr. 4928)

152. A "leadership" meeting (*i.e.*, a meeting of the officials of the local union and of the International staff officers in the area) was arranged to be held on February 6, 1955. (Tr. 4924-25, 5043, 9352) Petitioner's witness Gardner and respondent's witnesses Mooney and Salvas all testified that a meeting of the International staff members was held on February 5, 1955, to discuss the forthcoming leadership meeting and the Travis issue. (Tr. 4927, 9501, 9353) Gardner, Mooney and Salvas testified that Chase Powers, Al Skinner, Dougherty, Kalafatich, Gardner, Salvas, Mooney, and Dolan attended.¹ (Tr. 4925-27, 9502-03, 9348, 9351)

153. What transpired at the staff meeting preceding the leadership meeting was the subject of diverse views. Gard-

¹ Salvas was not certain that Dolan was there. (Tr. 9349) Gardner, in his testimony in a criminal trial given in advance of his testimony in this proceeding included Sonny Powers among those present and failed to name J. P. Mooney or Dolan.

ner testified that Skinner felt that detailed organization was necessary so the staff could control the leadership (local officials), and he proposed a resolution he drafted supporting Travis and presented to the leaders of the locals. (Tr. 4927-28) Gardner also testified that Chase Powers accused him (Gardner) of giving leadership to the opposition to Travis, and that he (Gardner) expressed the view that the staff was wrong in scheduling the leadership meeting because it would only further divide the union. (Tr. 4928) Mooney and Salvas testified that the staff unanimously agreed to direct the leadership toward leaving the Travis issue for solution at the next Mine-Mill convention. (Tr. 9503-9353) However, there were conflicts in the testimony of Mooney and of Salvas. Both Gardner and Mooney testified that the matter of Travis' reelection was discussed but Salvas did not recall that it was. (Tr. 4929-30, 9609, 9541) Mooney at one point testified that Gardner agreed with the staff (Tr. 9504) and at another point Mooney testified that it was not Gardner's position that the Travis issue be postponed until the convention. (Tr. 9542)

154. Gardner, Mooney and Salvas agreed that the three of them met at a Green's Cafe after this staff meeting. (Tr. 4929, 9505, 9357) Mooney and Salvas testified that Kalafatch was also present. (Tr. 9505, 9357) According to Gardner they discussed the Travis issue and drafted a compromise resolution calling for Travis to announce he would not be a candidate for reelection to International office. (Tr. 4929-30) According to Mooney, Salvas asked him to draft a resolution embodying the agreement reached earlier at the staff meeting, which Mooney said was to get the local leadership to postpone the Travis matter until the convention. (Tr. 9506) Salvas testified that he did not recall any resolution. (Tr. 9357)

155. Gardner, Mooney and Salvas all agreed that a second staff meeting was held during the morning preceding

the leadership meeting. (Tr. 9506, 4930, 9352) There was reasonably substantial agreement as to the names of others that were present. Otherwise, there were differences as to what took place. Gardner testified that he submitted a resolution to the staff for consideration. (Tr. 4930-31) Mooney testified that Salvas submitted it, (Tr. 9507) and Salvas testified that no resolution was submitted. (Tr. 9357-59) Gardner testified that after submitting the resolution, it and Gardner were attacked by Dolan who accused Gardner of playing an Eckert-type role and suggested that no consideration be given to the resolution. (Tr. 4931) Mooney testified that Salvas started to present the resolution and Dolan criticized it and Mooney. (Tr. 9507) Both Gardner and Mooney described the Dolan criticism as animated. (Tr. 9507, 4931) Salvas wasn't even sure that Dolan was present but testified that if he was he said nothing. (Tr. 9359) Gardner testified that a resolution in support of Travis was adopted. (Tr. 4931) Mooney testified that no agreement was reached at this second staff meeting, but that Salvas would make a report at the leadership meeting from notes. (Tr. 9508) Salvas testified that there was no resolution and he was merely to present the staff position. (Tr. 9360)

156. Gardner, Salvas and Mooney each recalled attending the leadership meeting in Butte on February 6, 1955, and that the staff position was presented by Salvas. (Tr. 9509, 9360, 4932) Gardner testified that the staff position was unqualified support of Travis. (Tr. 4931) Mooney and Salvas testified that the staff position was to postpone the Travis issue until convention time. (Tr. 9504, 9353) Gardner and Mooney agreed that the leadership rejected the staff position. (Tr. 9510, 9545) Salvas testified that he did not recall any rejection of the staff motion. (Tr. 9618) All three witnesses agreed that the position taken by the leadership was to call for the immediate resignation of Travis. (Tr. 4932, 9510, 9361)

73 157. Petitioner's witness Morales testified that he attended a meeting of the miners at which a reso-

lution was offered seeking to place the Butte local in support of Travis but the resolution did not even get a second. (Tr. 3771-72) This was also contained in a contemporaneous report that Moralez had made to the Federal Bureau of Investigation (A. G. Ex. 76) and the report also showed that it was the position of the Communist Party that Travis be supported. In addition, after Mooney and Salvas had left the witness stand, there was received in evidence as respondent's exhibit M. M. Ex. 204, the resolution drafted at the meeting between Gardner, Mooney and Salvas for presentation at the leadership meeting. This exhibit rebuts Salvas' testimony that no resolution was prepared (*supra*). The exhibit also rebuts Mooney on the approach to be recommended as to Travis, and supports Gardner. The latter (Gardner) was also corroborated by the happenings at a Communist Party meeting held after the leadership meeting. (See finding 159 below.)

158. The facts relevant to this proceeding which are found from the testimony and exhibits discussed in the above findings (151 to 157 inclusive) on the Travis issue will now be summarized. Maurice Travis became a serious issue among the Mine-Mill members in the Montana locals in late 1954 and early 1955, to the extent of agitation for his resignation, and a meeting of the leadership of the locals was scheduled to discuss the matter. Prior to the leadership meeting, the International staff officers in the area met to plan their approach at the leadership meeting. Most of these International staff officers were members of the Communist Party. With the exception of Gardner the International staff officers were for trying to get the locals to support Travis. A proposed resolution for the staff to present to the leadership was drafted at a meeting between Gardner, Mooney, and Salvas requesting that Travis announce he would not seek reelection as an officer of the International Union. The staff rejected this and Dolan was quite critical of such a proposition. The leadership of the Montana locals adopted a position calling for the immediate resignation of Travis.

159. Gardner and Morales testified without contradiction to a meeting of their Communist Party group on the evening following the leadership meeting, at which the leadership meeting was discussed. (Tr. 4933-35, 5054-56, 3772-77) Party functionary Hellman and also Dolan were present in addition to Gardner and Morales. Dolan accused Gardner of having played an anti-Communist Party role at the leadership meeting in telling the leaders they should determine their own destiny. Gardner was criticized by Dolan and Hellman for not having more interest and more emphasis in his talk at the leadership meeting in favor of Travis. Gardner replied that he favored the resignation of Travis in the interest of unity. Dolan took the position that in not supporting Travis, Gardner was going completely against Mine-Mill and Communist Party policy.

74 160. In mid-February of 1955, there was a meeting of the International Executive Board at which Travis submitted his resignation and proposed that Pezzati be named to replace him, which was done—Dichter was named to take Pezzati's place as Board Member for District 6. (Gardner, Tr. 4935-37; Mooney, Tr. 9513-16; Salvas, Tr. 9363-71, 9628-29, 9659-61) Gardner was present at this Board meeting as were Salvas and Mooney. There is conflict on who was responsible for Gardner's attendance at the Board meeting but there is no necessity to attempt to resolve the conflict since no finding will be made on the point.¹

161. While Gardner was in Denver in February of 1955 (see above finding) he was notified, first by James Durkin and then by Al Skinner, of a closed Communist Party meeting, which he attended. Also present were Mine-Mill functionaries Sanderson, Durkin, Dougherty and Skinner. Dougherty had been present at the Montana leadership

¹ The various conflicts between the testimony of Gardner, Mooney and Salvas have all been considered with particular attention, as noted *supra*, to the effect, of any, on the overall or general credibility of Gardner.

meeting and the Mine-Mill staff meeting that preceded it (*supra*). The Communist Party meeting was called for the purpose of having Gardner explain his position relative to the Butte strike settlement (see *supra*) and his activities in forcing the resignation of Travis. Gardner told the Party group that he thought the strike settlement was a sellout by the Communist Party, and that the role of Travis in the International Union was disruptive to the entire Union and they could not afford to go into the convention with such an issue before them. (Tr. 4937-41; see also M. M. Ex. 62, pp. 1751-55, 1878-81, 2047)

162. The Mine-Mill convention was held March 14 to 19, 1955, in Spokane, Washington (M. M. Ex. 127).² Not long thereafter, Irving Dichter, who had recently been appointed Board Member for District 6, (See *e.g.*, M. M. Ex. 127, p. 316) arrived in Montana and went to see Gardner at Gardner's home. (Tr. 4940-41) Dichter told Gardner that he (Dichter) was there to investigate Gardner's activities and his continued failure to accept the leadership of the Union, particularly with reference to the previous strike settlement, and that also to be investigated was Gardner's continued activities with a group that was identified with the ouster of Travis. (Tr. 4941-42) Gardner told Dichter that Bob Schrank, an International representative of the Union, had already come to town and had spent many hours discussing those very subjects with Gardner. (Tr. 4942) Dichter replied that Schrank was assigned there by the International and would report back to them but
 75 Dichter was to report to the Rocky Mountain Region of the Communist Party and some kind of action would undoubtedly be taken on the report.¹ (Tr. 4942)

² There was no convention in 1954. Pertinent occurrences at the 1955 convention are considered *infra*.

¹ The testimony of Mooney and Salvas to the effect that Dichter told them he had come to Montana at the request of the International officers to lay down the law to Gardner has been considered. (Tr. 9433-34, 9451-57, 9630, 9519-23) This is not inconsistent with Gardner's testimony and does not rebut it. Dichter was not called to deny Gardner's testimony.

163. A month or so after this meeting between Dichter and Gardner, Gardner was expelled from the Communist Party. (Gardner, Tr. 4942; Moralez, Tr. 3848-49) At a Communist Party meeting held by Moralez, Dolan, and Hellman, Moralez was instructed to cut off completely all contact with Gardner, and Dolan stated that Gardner would have to be removed from the Mine-Mill payroll. (Tr. 3849, 3860)

164. Gardner, Moralez, Mooney and Salvas agreed that Gardner was fired from Mine-Mill around June of 1955. Gardner testified that Pezzati came to town and told him it was necessary to fire him since the Union needed to retrench, and in the retrenchment they had to let Gardner go, also that the Union would move him anywhere he wanted to go if he would leave Butte. (Tr. 4943-44) Salvas testified to the effect that he (Salvas) found it necessary to have Gardner removed because Gardner was causing dissention in Mine-Mill in Montana, a lot of people in the area did not trust Gardner, and that Gardner was hurting Salvas and Mine-Mill. (Tr. 9385-9425) Salvas testified that he called Mine-Mill President Clark on the telephone and discussed the matter, that subsequently Clark and Pezzati arrived in Butte and met with Gardner and Salvas, and Clark advised Gardner he was being fired. (Tr. 9459-60; 9465-69)

165. While the record is conflicting on exactly who fired Gardner and why, the undisputed facts are that he was fired and that prior thereto the necessity of having him fired was the subject of a Communist Party meeting between Mine-Mill people, Dolan and Moralez, who were also members of the Party, and Communist Party functionary John Hellman who was not in Mine-Mill.

166. At the 1955 Mine-Mill convention, a resolution was offered reciting that foreign ideologies have no place in our form of government, and proposing that no person be permitted to be on the ballot for any job in Mine-Mill who has belonged or belongs to any subversive organization. (M. M. Ex. 127, p. 194) The resolution was defeated. (p. 195)

167. Also at the 1955 convention, Union spokesmen were critical of the United States foreign policies and domestic activities in the anti-Communist field. By way of example,

76 the Call to the Convention, which was prepared by Maurice Travis, attacked what was called "the frantic pursuit of 'subversives'" in this country, and the Government's "threat of 50 years of cold war." (M. M. Ex. 127, p. 6.) Union spokesmen continued to refer to the indictment of persons under the Smith Act as a "frameup." (M. M. Ex. 127, pp. 86 & 254.) Criticism of and resolutions against the Department of Justice, the Senate Internal Security Committee, the House Committee on Un-American Activities were made and adopted. (See, *e.g.*, M. M. Ex. 127, pp. 87, 162, 256-260.)

168. The pattern of attacks upon the Government of the United States continued at the 1956 convention. To illustrate, a resolution was passed, upon motion of Irving Dichter, which, among other things, urged greater effort to stop "witch-hunting by Congressional committees," to repeal the Smith Act, and to "Free the victims now in jail, under indictment, or appealing convictions under the thought control legislation now on the statute books." (M. M. Ex. 128, p. 75.)

169. Petitioner's witness Fikes was a member of the Communist Party from 1948 to 1959. (Tr. 5117-5120) In late 1957, it became necessary for Fikes to leave Alabama where he then lived and he went to Los Angeles, California. (Tr. 5069, 5074) The Communist Party people in Alabama told Fikes to contact the International representative for Mine-Mill in the Los Angeles area and he could get him a job. (Tr. 5074-75) Fikes arrived in California in October of 1957 and contacted Mine-Mill International representative Harlow Wildman. (Tr. 5073) Fikes told Wildman that Wildman could verify who Fikes was through Asbury Howard or Charles Wilson or other Mine-Mill people in Alabama. (Tr. 5074-75) Wildman replied that if this is

right "we will get you a job." (Tr. 5075.) Wildman had Fikes fill out an application with the American Brass Company and Fikes subsequently got a job with that company. (Tr. 5075-76)

170. In January 1958 or February 1958, Fikes met in Los Angeles with Asbury Howard who had come to California from Alabama. (Tr. 5079) They discussed the whereabouts and activities of various mutual acquaintances in the Communist Party. (Tr. 5080) At the request of Pettis Perry, a member of the National Negro Commission of the Communist Party, Fikes arranged a meeting at his house between Asbury Howard and Pettis Perry. (Tr. 5081-82) Perry asked Howard for a report on what was going on in the South and about Howard's contacts with Communist Party members in Alabama. (Tr. 5082)

171. Around the middle of 1958, Fikes and Mine-Mill functionary Chase Powers went out in Fikes' automobile to call on various employees of the American Brass Company to get them to vote for the Mine, Mill and Smelter Workers.

(Tr. 5087) On the way, Fikes and Powers discussed
77 the American Communist Party and how it could be made a strong Marxist-Leninist Party like the one in the Soviet Union. (Tr. 5087-88)

172. There was objection by counsel for respondent to the Fikes testimony and to other evidence post-dating the filing of the petition, as has been discussed *supra*. (See Tr. 5084-86.) Objection was overruled since post-petition evidence can be illuminating of the issues in a similar manner to evidence of events that happened prior to the petition and prior to the three-year period set forth in the statute. For instance, petitioner's witness Barbara Hartle knew Harlow Wildman and Chase Powers as members of the Communist Party in the 1940's. (Tr. 5269-71, 5320) The testimony given about both of them by Fikes evidences that they have continued their Party connections while also occupying functionary positions in respondent. Moreover,

the meeting in 1957 or 1958 between Asbury Howard and a national officer of the Communist Party, Pettis Perry, tends to show continuation of various instances throughout many years where functionaries of respondent have been getting together with high Party officials, even in the face of the constant complaints by some members of the Union of Communist orientation of the Union.

E. POLICIES AND PROGRAMS OF RESPONDENT

173. As indicated in the findings *supra*, respondent has consistently taken positions in opposition to the foreign policies of the United States and in opposition to the domestic laws and programs of the Federal Government in the field of Communism. As will appear, petitioner presented evidence that the policies and programs of respondent and the views advanced by the leaders of respondent in these areas have had a consistent similarity with and have been substantially identical to the positions taken and advanced by the Communist Party of the United States.

174. For the most part the evidence of the policies and positions of the Communist Party, sometimes referred to by petitioner as the "Communist line" (see, *e.g.*, A. G. Ex. 103A, B & C) consisted of material from the Daily Worker, The Worker, or Political Affairs, all shown on the record as official organs of the Party and authoritative of Party policy, position and program. (*e.g.*, Tr. 5224-27) The policies and positions of respondent ("Mine-Mill line") were evidenced by resolutions adopted at the conventions or by actions of the Executive Board. Also, the positions or views of respondent's leaders were evidenced by statements made at conventions or at board meetings, or by articles published in the Union, respondent's official organ. Pertinent parts of the various publications, such as the Daily Worker and the Union, were received in evidence as A. G.

Exs. 102 and 103. The material from the documents
78 was abstracted by topics in petitioner's exhibit A. G.
Ex. 101. For reasons of competency or relevancy

some of the material offered by petitioner to prove a position or policy was rejected. (See, *e.g.*, Tr. 5427.)

175. Findings will be made below on the topics and events as to which the evidence showed an identity of policies and positions of respondent and of the Communist Party. Consideration will then be given to the relevancy and probative value thereof to the issues in this proceeding.

176. (a) Significant to the coincidence of the policies of Mine-Mill and those of the Communist Party in earlier years were the positions taken and advanced by each concerning the Soviet Union and Nazi Germany prior to the Hitler-Stalin Pact of 1939, during the Pact, and after its abrogation in 1941.

(b) During the years prior to the Hitler-Stalin Pact, the Soviet Union, the Communist Party of the United States, and Mine-Mill all attacked Nazi Germany in particular and Italy and Japan as well. All came out against the neutral positions of the United States. The Communist Party U.S.A. and Mine-Mill criticized the Neutrality Act and urged that it be revised. In mid-1939, the Communist Party and also Mine-Mill urged a boycott on Germany, Italy and Japan, and an embargo on these nations. (See A. G. Ex. 101, pp. 1-17; particularly pp. 1-4; A. G. Ex. 102-C, pp. 4, 11-12, 15, 17-19; A. G. Ex. 103-A, pp. 2-7, 10; A. G. Ex. 103-D, pp. 1-14, 24)

(c) On August 23, 1939, Russia and Germany entered into a non-aggression agreement known as the Hitler-Stalin Pact. The Communist Party and also Mine-Mill thereafter took positions diametrically opposite to their former stands. Both came out for the United States observing a strict neutrality. Both changed from calling the European war one of fascist aggression to calling it a war of imperialism. Both opposed military preparedness on the part of the United States and demanded strict enforcement of the Neutrality Act. (See A. G. Ex. 101, pp. 5-12.)

(d) In June of 1941, Germany invaded Russia. A volte-face again took place in the positions taken and advanced by the Communist Party and by Mine-Mill President Robinson. Both then came out for full aid and support to the Soviet Union in its war with what again became fascist aggression, and both the Party and the Union again urged repeal of the Neutrality Act. (A. G. Ex. 101, pp. 13-16)

177. After the entry of the United States into World War II, the Communist Party urged the opening of a second front in Europe without delay, and the Party exhorted labor not to lose a moment in agitating for a second front. (A. G. Ex. 101, p. 17; 103-A, pp. 21-24) At the Mine-Mill convention in September of 1943, President Robinson in his report called for the invasion of western Europe without delay and tied this in with the building of friendship and understanding between the Soviet Union and the United States. (A. G. Ex. 101, pp. 17 & 18; 102-C, p. 48)

79 178. Similar positions calling for the United States to break diplomatic relations with "Franco-Spain" were advanced by the Communist Party and by respondent in the late 1940's. (A. G. Ex. 101, p. 19; M. M. Ex. 5, pp. 597-98; M. M. Ex. 72, p. 97; A. G. Ex. 35, pp. 164-165) Similar positions were also advanced in 1948 against the Chiang Kai Shek regime in China (A. G. Ex. 101, p. 22) and, on the other hand, both the Communist Party and Mine-Mill advanced positions in 1949 and 1950 favorable to Red China and urging its recognition by the United States.¹ (A. G. Ex. 101, p. 22; A. G. Ex. 102-C, pp. 161-164)

¹ There is no basis of record for finding that the various positions of respondent always were taken after the Communist Party had announced its position. In some instances or topics the evidence of the Communist Party position was contained in a document dated earlier than the material evidencing a similar or parallel position on the part of respondent. In other instances, the converse was true. Proof that the Party position always came before that of respondent is not a necessary element although the absence of such showing has been considered in evaluating the matter of the similarity of positions.

179. The opposition of Mine-Mill to the Truman Doctrine and the Marshall Plan (*supra*) which was expressed in convention resolutions and also by the International Executive Board, was parallel with agitation by the Communist Party against those facets of United States foreign policy. (A. G. Ex. 101, pp. 26-28) Both Mine-Mill and the Party urged that the Truman Doctrine and Marshall Plan be scrapped. (A. G. Ex. 101, p. 28; M. M. Ex. 84, p. 13; M. M. Ex. 120 & 121)

180. In May and June of 1950, the Communist Party called on the American working class to wage a struggle for outlawing the atomic and hydrogen bombs. (A. G. Ex. 103-B, pp. 102, 106-108) At the Mine-Mill convention held in September of 1950, President Clark took a strong position for outlawing these bombs and the convention passed resolutions to that effect. (A. G. Ex. 36; M. M. Ex. 123, pp. 99-126) In May and August of 1950, the Communist Party in Political Affairs called for renewed energy on the part of the workers to sign up millions of people for the Stockholm Peace Petition. (A. G. Ex. 101, pp. 31-32) At the Mine-Mill convention in September of 1950, speakers for Mine-Mill locals reported that large numbers of signatures had been obtained for the Peace Petition, and the President's report favoring the Peace Petition was adopted by the convention. (A. G. Ex. 101, p. 31) Further, the Communist Party and Mine-Mill took positions against the rearming of Germany and of Japan. (A. G. Ex. 101, p. 30; A. G. Ex. 25, pp. 213-218)

181. The Korean War and participation therein by the United States brought forth similar positions from the Communist Party and Mine-Mill calling for the United States to withdraw and for termination of the war. (A. G. Ex. 101, pp. 33-34; M. M. Ex. 123, pp. 101-126) The 1951 Mine-Mill convention passed a resolution for the full restoration of peace in Korea, after hearing a speech by Irving Dichter, (M. M. Ex. 124, p. 100 & 102) Mine-Mill

official and member of the Communist Party (*supra*). The report of President Clark maintained that peace was easier to attain than it was made to seem by "the architects of U. S. 'cold war' policy." (M. M. Ex. 124, p. 215.)

80 The Communist Party in Political Affairs for January of 1955, advocated "peaceful co-existence" between the Soviet Union and the western nations and took the position that peaceful co-existence was gaining ground against the resistance of Churchill and Eisenhower. (A. G. Ex. 103-B, p. 157.) Mine-Mill at its convention in March of 1955, came out for "The new idea, 'co-existence.'" (A. G. Ex. 101, p. 46.) (M. M. Ex. 127, pp. 40-44.)

183. At the 1949 Mine-Mill convention, President Clark (who was still President at the time of the hearing) included in his official report the position that "the struggle gripping America and the world today is between the peace camp on the one hand and the warmakers on the other." (M. M. Ex. 122, p. 247.) Clark attacked the Atlantic Pact that had recently been ratified by the United States Congress as an "alliance for war" and "a futile and stupid attempt at policing the world." (P. 273.) He declared that "a conflict between this country and Russia is as unnecessary as it would be disastrous." (P. 273.) He urged a German peace treaty and getting both Russian and American troops out of Germany. (p. 274) A resolution to adopt the President's report on foreign policy was made and passed by the convention. (pp. 213-218) Irving Dichter, found *supra* to have been a member of the Communist Party and who was later appointed a member of the International Board and still later, in 1959, appointed International Secretary-Treasurer (*supra*), took the floor in favor of the resolution. (p. 214) His remarks included high praise for the Soviet Union and the "Eastern European democracies," and he urged that the United States extend foreign trade with them. (M. M. Ex. 122, pp. 214 & 215.)

184. At the 1952 Mine-Mill convention one Karen Morley, a guest speaker, made a quite provocative speech

downing the United States Government and strenuously condemning what she called the crusade against Communism. She accused the United States of killing children in Korea by dropping jellied gasoline, and of decimating the country. She predicted that the people in France and other countries will not fight for what she called American corporate profits, and said that the United States could not dare to arm them to fight the Soviet Union. (M. M. Ex. 125, pp. 67-72) At the completion of her vehement tirade against the United States there was "Prolonged applause and delegates arose"; President Clark said to the speaker and the convention that her thinking "is the thinking of all of us" and that the leaders of Mine-Mill and "many of its rank and file, have spoken in the same tone." (M. M. Ex. 125, pp. 67-72.)

185. Also at the 1952 convention, Irving Dichter took the floor to proclaim that "the two major political parties in this country today are loaded dice" and "The time has come to have a party of the people." (M. M. Ex. 125, pp. 175 & 176.) Among other things Dichter advanced was

81 "The time has come to say to hell with the Dixiecrats, to hell with the corrupt politicians, to hell with big city machines that are alive with the gangsters and the pimps, to hell with General Foods, to hell with General Electric and General Motors; we have too many generals in this country." (P. 175.)

186. The record is replete with instances, of which the findings heretofore made in this section are illustrative, where the Communist leadership of respondent has aligned Mine-Mill with the Communist camp of the world and has taken and advanced positions in their official capacities which have been identical with the positions of the Communist Party of the United States. The identity of policies and positions of Mine-Mill and the Communist Party was consistent during the many years covered by the record, which starts with the reversals of positions as the relationship between the Soviet Union and Germany changed dur-

ing the years 1939-1941 (*supra*); continued through the Truman Doctrine, the Marshall Plan and the Atlantic Pact in the late 1940's and early 1950's (*supra*); and still continued with the advancing of "peaceful co-existence" in 1955 (*supra*).

187. The positions of Mine-Mill and of the Communist Party regarding the foreign affairs and relations of the United States have consistently been against the United States—it has always been the United States at fault, never the Soviet Union. The latter, in fact, has been consistently praised. Persistent efforts have been made, and with apparent success as the findings *supra* indicate, by the Communist leaders of Mine-Mill to convince the membership of the Union that Wall Street and the United States Government are their enemies.

188. As the findings made below will illustrate, the policies and the position taken and advanced by respondent and by the Communist Party have been identical in opposing and urging elimination of the domestic laws of the United States designed to hamper and expose the Communist movement.

189. Related to similar positions of the Communist Party and Mine-Mill in blaming the United States for the cold war and of seeking to start a war with the Soviet Union (*supra*) were the similar positions of both on the Selective Service Act and military conscription. The Communist Party in Political Affairs for June and September of 1948 advocated against peacetime conscription in the face of what the Party called popular opposition. (A. G. Ex. 101, pp. 53-54) Mine-Mill at its convention in September of 1948 and in its official organ, the Union, for October 25, 1948, demanded repeal of the peacetime draft and complained about "peacetime conscription." (M. M. Ex. 121, p. 169.)

190. Mine-Mill strongly opposed and condemned the anti-Communist affidavit requirement of the Taft-Hartley

82 Act and the provisions of the Smith Act, a criminal statute dealing with efforts to overthrow the Government of the United States by force and violence. Evidence of Mine-Mill advocacy of opposition to these laws and efforts to stir up sentiment against them included resolutions passed at conventions during the period 1949-1955, actions of the International Executive Board from time to time in this period, and editorials in the Union newspaper. (A. G. Ex. 101, pp. 47-49; M. M. Ex. 124, pp. 149-150) Evidence of the Communist Party positions included material from the Daily Worker in 1950 and Political Affairs in 1951 and 1953. (A. G. Ex. 101, pp. 47-49) Not only did Mine-Mill and the Party condemn these Acts and urge activity to cause their repeal, both the Party and Mine-Mill advanced the parallel propaganda that these Acts were anti-labor, a manifestation of the capitalist efforts to destroy freedoms of the people, and part of a cold war drive of the business interests. (A. G. Ex. 101, pp. 47-49) Included in the approaches taken by both Mine-Mill and the Communist Party was that Taft-Hartley and the Smith Act were edges of a capitalist sword with which to destroy labor unions. (A. G. Ex. 101, p. 47; M. M. Ex. 124, pp. 149-150)

191. Congressional committees investigating subversive activities in the United States have been the subject of strong, similar, and parallel attacks by the Communist Party and Mine-Mill from the beginning of the committees in the late 1930's up to the time of this proceeding. The Party and Mine-Mill have campaigned for putting an end to these committees. (A. G. Ex. 101, pp. 56-58) In attacking the Congressional investigating committees both Mine-Mill and the Communist Party have advanced the proposition that the committees operate against labor. By way of example: the Communist Party in Political Affairs for June 1948 advanced the position that the elevation of the House Committee on Un-American Activities to the status of a permanent body paved the way for, among other things mentioned, "the persecution of . . . labor leaders on trumped-

up perjury charges," (A. G. Ex. 101, p. 56); Mine-Mill, at its convention in September of 1948 adopted a resolution calling for the abolishment, among others, of the House Committee on Un-American Activities which was accused in the resolution of attempting "to smash the trade union movement" (M. M. Ex. 121, pp. 222-224). In this resolution the position was advanced that the Government of the United States was endeavoring "to get the American people into a mental state of accepting war with the Soviet Union." (P. 223.) In the official call to the 1951 Mine-Mill convention the statement was made that during the year "We saw the lives of Loyal Americans ruined by the depraved antics of the so-called Un-American Activities Committee" (M. M. Ex. 124, p. 38).

192. The efforts of the Communist Party to attack the Government of the United States have included positions denouncing the Federal Bureau of Investigation and the Immigration and Naturalization Service of the Department of Justice. (A. G. Ex. 101, pp. 59-61) Mine-Mill has like-

wise attacked the F.B.I. and the I.N.S. (A. G. Ex. 83 101, pp. 59-61; A. G. Ex. 35, pp. 222-224; M. M. Ex. 95, Appx. IV, p. 5) Both the Party and Mine-Mill have also opposed the Federal Employees Loyalty Program. (A. G. Ex. 101, p. 64; M. M. Ex. 95, Appx. IV, p. 5)

193. The Communist Party in an article in the Daily People's World for April 11, 1951, condemned the conviction of Julius and Ethel Rosenberg for espionage on behalf of the Soviet Union as "designed to shock the American people into a sense of emergency and of danger from the Soviet Union which they do not feel" (A. G. Ex. 103-A, p. 70½). At the 1952 Mine-Mill convention, President Clark urged his locals to register protests against the conviction of the Rosenbergs, and resolutions to that effect were passed by the convention. (A. G. Ex. 58, pp. 124-125, 232)

194. In the 1950's convictions on criminal charges were made in cases known as "the Trenton Six," "Willie McGee,"

and "the Martinsville Seven." The Communist Party came out against these convictions and urged action to free all of the defendants. (A. G. Ex. 101, pp. 69-71) Mine-Mill also came out in support of these various defendants. (A. G. Ex. 101, pp. 69-71) Illustrative of the similarity of positions, the Communist Party in the Daily Worker for June 30, 1950, took the position that "the world's people" well know that Willie McGee and the Martinsville Seven had "committed only one 'crime'—they were born with black skins." (A. G. Ex. 103-A, p. 50.) At the 1951 Mine-Mill convention, President Clark, in his official report, declared that: "World-wide protests in both the McGee and 'Martinsville Seven' cases failed to halt these barbarous killings of men who, in the eyes of millions, were victims of 'Jimcrow Justice.'" (A. G. Ex. 102-C, p. 141.)

195. The Communist Party, as evidenced by the Daily Worker for February 6, 1951, took the position that the United States practices genocide against Negroes of America and against the colored peoples of Asia. (A. G. Ex. 101, p. 72) The same charge of acts of genocide against the Negro people by the United States Government was made by Mine-Mill at its 1952 convention. (A. G. Ex. 101, p. 72)

196. In 1948 the Communist Party supported the Progressive Party and Henry Wallace in the national elections. (A. G. Ex. 101, pp. 65-66) This was paralleled by the report of Mine-Mill President Clark at the 1948 Mine-Mill convention in which he characterized the Progressive Party as "the most auspicious development on the American political scene in many a year." (A. G. Ex. 101, p. 66.)

197. There is no instance in the record where respondent has taken a position which varied from a position or program of the Communist Party.

198. The theme that the foreign policy of the United States has not been in the best interest of the working

84 people, and the theme that the domestic programs of the United States aimed at controlling subversion and preserving the national security are actually aimed at destroying trade unions, appear in various forms and with various pitches throughout the record of actions taken by Mine-Mill and positions advanced by the Communist leaders of Mine-Mill. A reading of the record is convincing that a major program of respondent throughout the many years covered by the evidence has been one of stirring up and advocating hate for and distrust in the Government of the United States and advocating action to change the foreign policy and the domestic policy in the field of Communism. On the other hand, whenever the Soviet Union has been referred to in convention resolutions or in statements by the leadership of respondent there has been a complete absence of criticism and usually praise. In addition to the findings already made *passim*, a few further illustrations selected more or less at random will be set forth.

199. A resolution approved at the 1953 convention to repeal Taft-Hartley recited that "The government of the U.S.A., through the perfidious machinery of the infamous Taft-Hartley Act, has seen fit to attack Labor. . . ." (M. M. Ex. 126, p. 91.) A resolution approved at the 1955 convention recited that insistence upon " 'unanimity' in every important phase of national life is rapidly becoming the policy of our national government." (M. M. Ex. 127, p. 84), that "All over the world we here in the United States are watched with pity, amazement and a great deal of amusement" (p. 85), and that "The informer and stoolpigeon hold court over a fear-ridden land" (p. 85). Another resolution passed at the 1955 convention recited that the heart of the Communist Control Act of 1954 "is its anti-union sections cloaked with provisions seemingly directed only against Communists." (M. M. Ex. 127, p. 162.) At the 1956 convention, International Vice President Asbury (found *supra* to have been a member of the Communist Party) advanced the view

that the real enemies of the working class are those that are "passing the right-to-work laws, the Taft-Hartley laws, the Brownell-Butler laws. . . ." (M. M. 128, p. 62.)

200. There was no dispute in the record that Mine-Mill has opposed the Taft-Hartley Act, the Smith Act, the Federal Employees Loyalty Program, the Alien Registration Act, the McCarran Act, and the Brownell-Butler Act, among others. (See, for instance, Part 5 of President Clark's report to the 1956 convention.) (M. M. Ex. 128, pp. 238-241.) And, it was not disputed, as stated by President Clark in remarks made at the 1949 convention, that Mine-Mill combats "the extension of American monopoly to other lands" which is in the form, according to the position taken by Mine-Mill "of raw, rank imperialism." (A. G. Ex. 25.) (M. M. Ex. 122, p. 25.) The merits of the positions taken and advanced by Mine-Mill or its leaders in their capacity as such are of no concern in this proceeding. The relevancy of the policies, positions and programs taken and advanced by respondent is limited to whether they evidence
S5 domination by the Communist Party and support of the Communist Party, as will be outlined below.

201. A substantial number of the leadership of respondent have been members of the Communist Party (*supra*). The Communist Party member-leaders of respondent have advanced positions to the membership of respondent and the membership itself has taken and carried out policies and positions which have been consistently identical with the policies and positions of the Communist Party (*supra*). The Communist leaders of respondent have gained the confidence and support of the majority of the Union membership (*supra*). It follows from this and other evidence of record that to a real and significant extent the policies of respondent have been formulated and carried out pursuant to the direction or advice of the Communist leadership. (See section 13 (A)(e)(2) of the Act.)¹

¹ Further evaluation of the evidence, taken as a whole, is made in the "Concluding Findings," *infra*.

202. It is a policy of the Communist Party that its members in labor unions educate the workers that the Government of the United States is their enemy (*supra*). The Communist leaders of respondent have consistently done this (*supra*). It is a policy of the Communist Party to have Party members and Party sympathizers in positions of authority in labor unions (*supra*). The Communist leaders of respondent have appointed to staff positions in respondent many members of the Communist Party (*supra*).

203. There was evidence showing specific, strong interest by the Communist Party in Mine-Mill, and of Communist leaders and functionaries of Mine-Mill attending Communist Party meetings with Party functionaries not in Mine-Mill at which Mine-Mill affairs were discussed (*supra*) (e.g. Moralez, Tr. 3653-67, 3995, 4037-38). The actions of the Communist leaders of Mine-Mill in consistently advancing positions and programs identical to the positions and programs of the Communist Party in opposition to the foreign policies of the United States and to the Federal laws aimed at preserving the national security are strong indications, among other indications of record, that the Communist leaders of Mine-Mill were using Mine-Mill to implement the policies of the Communist Party.²

86 F. THE EVIDENCE PRESENTED BY RESPONDENT

204. The evidence presented by respondent was primarily in the nature of an affirmative presentation or defense and thus warrants separate consideration and evaluation.¹

² At a Communist Party meeting in 1950 attended by petitioner's witness Moralez and other Mine-Mill functionaries there was discussion of the Korean War and Party pamphlets on the subject were distributed. (Tr. 3925-28) The positions of Mine-Mill were the same as those of the Communist Party regarding the Korean War (*supra*).

¹ Certain aspects of the testimony and documentary material presented by respondent have been considered in arriving at the findings heretofore made. This includes, among other things, the rebuttal by Mooney and Salvas for respondent of some of the matters about which petitioner's witness Gardner testified. It also includes the testimony by a large

205. A major portion of the testimony and exhibits presented by respondent was designed to show a democratic character of the Union. Some 111 persons from some 55 local unions were at the time they testified, or had been, officers of the locals and members of respondent for varying periods up to many years. In addition, respondent put in evidence copies of all of the minutes of its International Executive Board from 1946 to 1955, when the petition in this proceeding was filed (M. M. Exs. 71-118) and copies of all of its annual convention proceedings from 1946 to 1960 (M. M. Exs. 119-132). The testimony of the rank and file members was uniform and similar. For this reason and to avoid unduly extending the findings, the testimony and documentary material will not be detailed.

206. These witnesses testified, and it is found, that the officers of the local unions are elected by secret ballot of the local membership following nominations made at meetings in advance. Any member of the locals who is current in the payment of his dues is eligible for office and to make nominations. Local unions are represented at the annual conventions by varying numbers of delegates depending upon the size of the locals. The convention delegates are chosen by the local members by nomination and election.

207. Strikes and collective bargaining agreements are decided by vote of the membership of the locals. Where locals have endorsed political candidates in state or national elections or have taken positions on legislation these have been on the basis of discussion and vote of the membership.²

number of respondent's witnesses that International officers and staff members who had been identified with the Communist Party by petitioner's witnesses had never told respondent's witnesses that they belonged to the Party or tried to get respondent's witnesses to join the Party.

² Not many of the locals represented by the witnesses called by respondent have had any regularity in endorsing political candidates. Some have never done so and with others it has been limited to candidates for the state or national legislatures from time to time.

87 208. Most of the witnesses were asked and gave the opinion that democratic procedures are fully observed at local meetings and that the witnesses have not observed any indication of control by the Communist Party or any outside influence.

209. A number of the rank and file member-witnesses had been elected by their locals and attended as delegates one or more of the annual conventions. They testified that anyone who desired was given the floor to speak on any matter at the conventions. This also appears from the convention proceedings. The resolutions adopted and other actions taken at the conventions have been on the basis of a majority vote. The witnesses testified to a man that they never noticed anything at the conventions to indicate the conventions were run or influenced by the Communist Party. On cross-examination those witnesses who were asked said that they knew nothing about the Communist Party or the tactics and strategy of the Communist Party in the labor movement.

210. Three of respondent's witnesses (M. C. Anderson, Verne Curtis, and Ernest Salvas) were members of the International Executive Board at the time they testified. Anderson first became a Board Member by appointment in December of 1959. Curtis was appointed Board Member in April of 1960. (Tr. 8393) Salvas was appointed a Board Member in 1954 and was subsequently reelected in 1957 and 1959. (Tr. 9253) He was defeated in 1961. (Tr. 9724) Each of these three witnesses had been employed as International representative for a number of years before being appointed to the International Board. Each had run for the office of Board Member prior to the year when they were appointed. Each testified to the effect that no one ever told him that it was necessary to be a member of the Communist Party in order to run for international office, and that he was not threatened with loss of his job as International representative for running against the incumbent office holders.

211. The witnesses for respondent who were International representatives at the time of their testimony included: Glen Buckner who was hired for the job in June of 1960; Edward Coleman, hired in July of 1955; Angelo DeStefano, hired in July of 1960; Jesse Doster, an International representative since 1940; Michael Gazy, hired in February of 1956; Jacob Mercado, hired in June of 1960; and J. P. Mooney, who became an International representative in 1943. (Tr. 9493)

212. (a) Because it is fairly representative of that given by most of respondent's witnesses, the testimony of Jesse Doster will be set forth in detail, including that elicited on cross-examination.¹

SS (b) When Doster was offered, and accepted, the job as International representative, he was not asked if he was a member of the Communist Party nor told he had to be a member to have the job. (Tr. 6326-27, 6369) The servicing of a local that is performed by International representatives consists of handling grievances and arbitrations; the representative sometimes audits the books of the local; he attends meetings of the local but has no voice unless he is also a member of the particular local; the trustees and officers of the locals frequently ask advice of the International representative and he has a great deal of influence with officials and members of the locals; the International representative participates in negotiations on behalf of locals and sees that locals follow the constitution with respect to election procedures (Tr. 6371-73, 6383) The representative in servicing a local works with it but has no say in the meetings unless he has a progress report to make; he has nothing to do with the operation of the local unless

¹ At the time of testifying, Doster was the International representative serving Local 870 covering nine plants, Local 838 covering four plants, and Local 863 covering five plants. The combined membership of the three locals was around 950. The locals are located in Mine-Mill District 5. (Tr. 6330-31, 6336, 6328)

there is a violation of the International Constitution.¹ (Tr. 6338-39)

(c) The usual local meeting is called to order by the president, there is an invocation, roll call of officers, minutes of previous meeting read, officers' reports, reports of committees, communications read, unfinished business considered, new business taken up, International representative asked if he has anything to say, and motion for adjournment. (Tr. 6384-85) Local union executive boards have no authority to make any decisions, all they can do is recommend to the local membership. (Tr. 6354-55) Attendance at meetings is around one-fourth to one-third of the membership except when negotiations are going on at which time there is a large attendance. (Tr. 6373-74) Various things such as raffles have been used to improve attendance. (Tr. 6385-86) When a contract is negotiated for a local it is signed by the International Executive Board member, then by the International representative, then by the entire local negotiating committee. (Tr. 6388-89)

89 (d) An international representative makes regular, periodic, reports to the International on griev-

¹ Petitioner's witness Henderson was a functionary of Local 18 (Mine-Mill District 7) in the year 1954. (Tr. 2790) During June of 1954 he attended a meeting of the local at which the recording secretary read the minutes from a previous meeting at which the president of the local had accused certain of the members of following the Community Party line and wanted to know if they were Communists. James Dougherty, an International representative (found *supra* to have been a member of the Communist Party) said the president had been out of order asking questions about political beliefs. Rudy Hanson, also an International representative (and member of the Communist Party, *supra*) agreed, called the action of the president "red-baiting," and accused the president of being a company agent. There was a motion to strike the minutes but Pete Piekarski, also an International representative (and member of the Party, *supra*) took the floor and said that a few years earlier a motion had been passed that Communism would not be brought up on the floor of the Union and, therefore, the president's questions and accusations would be automatically stricken. (Tr. 2829-23) This is an instance where the International representatives were quite verbose at a local meeting when a matter outside of routine local business was discussed.

ances and negotiations handled and other matters on forms provided by the International; a copy of the reports goes to the Executive Board Member for the district who gives his approval by signing the reports; the International representative writes to the International for advice; he submits vouchers to the International Financial Secretary. (Tr. 6390-94)

(e) Nominations for International officers and board members are made at annual conventions and elections are by a referendum vote of all members of the Union. (Tr. 6341-42; 6355) The International sends ballots to the local unions based on the per capita membership, after the members have voted the ballots are returned to the International office, together with all unvoted and spoiled ballots. (Tr. 6375-76, 6387) A canvassing committee composed of one rank and filer from each district makes the final count of the ballots at the International office. (Tr. 6356)

(f) Every paid-up member of a local affiliated with the International Union receives a copy of the newspaper put out by the International. (Tr. 6376-77)

(g) In the period of 1947-1949 there was discussion in the locals of District 5 on whether the locals should comply with the non-Communist affidavit requirements of the Taft-Hartley Act. Doster was for noncompliance and so were the locals. In 1949 when the Mine-Mill International complied, Doster and the locals in District 5 agreed to the change in policy. (Tr. 6358-60) The first information that Doster had that the International had changed its policy came from the "Union" newspaper but Doster had changed his mind on noncompliance before he read the Union. (Tr. 6376-77) The secession movement in Birmingham had much to do with Doster changing his mind on Taft-Hartley compliance because the Union lost some 4,000 members to another union in April of 1949. (Tr. 6377-79)

(h) Doster attended the 1953 Mine-Mill convention and when he arrived he was informed by one Frank Allan

that Asbury Howard was going to be nominated for Eastern Vice President, and Doster was asked to support Howard. Charles Wilson nominated Howard. Before the nomination, Doster attended a District 5 caucus where it was agreed unanimously to support Howard. (Tr. 6339-42)

(i) Doster had known Asbury Howard and Charles Wilson for many years. Neither ever told Doster that he was or had been a member of the Communist Party nor ever asked Doster to join the Party. (Tr. 6365-66) No officer of Mine-Mill ever told or suggested to Doster that he had to be a member of the Communist Party to have a job with Mine-Mill. (Tr. 6367) Doster never asked any of the Mine-Mill International officers or staff members if they were members of the Party, and Doster knows nothing about the Communist Party or of the Party's strategy and
90 tactics in labor unions. (Tr. 6379-82)

213. Continuing with the consideration of respondent's affirmative presentation, respondent in its proposed findings relies extensively upon an article by Leo Bromwich entitled "Union Constitutions" that appeared, according to respondent, in "The Fund for the Republic, 1959." (Proposed Findings, p. 2.) The "study," as respondent refers to it, was not offered or received in evidence, is not a part of the record, and no copy was provided. Respondent states in its proposed findings that the constitution of the International Union of Mine-Mill and Smelter Workers is compared favorably by Bromwich with those of other unions in providing fairness in election procedures and other union matters.

214. As indicated from the findings already made, respondent's witnesses were permitted to testify, over petitioner's objection that the testimony was irrelevant and immaterial, to facts and their opinion that Mine-Mill has been run "democratically." In a few instances, the witnesses referred to the procedures of other unions. However, the character of other unions is not at issue in this

proceeding and facts on such matters as how other unions elect their officers, or how they fix salaries, would unduly burden the record and would not have any substantial bearing on whether Mine-Mill meets the statutory definition of Communist-infiltrated.

215. In addition to testimony as to "democracy" in Mine-Mill as they saw it, petitioner's witnesses, as has been set forth *supra*, testified to their satisfaction with the economic gains made over the years under the banner of Mine-Mill. The Research Director, Stern, testified in considerable detail to contract negotiations, to the economic issues in many of the strikes that have taken place during negotiations, and to the terms of the agreements reached; he showed how the Union developed industry-wide negotiating, nationwide wage policy activity, and uniform patterns of package settlements. Various statistics were presented by respondent through the witness Stern on such things as wage gains in various industries, fluctuations in copper prices and the effect on negotiations, and the increasing scope or area of bargaining. To give just one example, according to Stern the consumer's wage index increased 62.7% from 1946 to 1960 while average hourly earnings in copper mining went up 159.2%. (Tr. 8082)

216. There was no dispute in this proceeding over the economic aspects of the Union's operations and no useful purpose would be served in giving further consideration to this aspect of respondent's affirmative presentation. It is quite clear from the record that Mine-Mill has in fact devoted substantial time, money and effort to the economic matters of which labor unions are formed.

91 217. The issues in this proceeding turn upon non-economic matters: the Communist Party membership or Communist orientation of the leadership of respondent, and the implementation of Communist Party policy within the Union. It was ruled at the close of petitioner's case in chief that a *prima facie* showing had been

made. Respondent did not fully meet the issues raised by petitioner's evidence. None of the persons directly involved, with the exception of Mooney and Salvas in connection with some areas of Gardner's testimony (*supra*), were called to deny or explain the facts established by petitioner.

218. The record shows that the matter of Communism within the Union has been met, if at all, by the use of the term "red-baiting." The term was used by a number of respondent's witnesses and also appears in documentary material, such as the convention proceedings. Examples will now be given and will show the consistency and manner of the use of the term.

219. Criticism made to Mine-Mill President Robinson by Mine-Mill representatives that the difficulties of the Union in Connecticut in 1942 arose because of Communist Party activity were met by Robinson calling the representatives "red baiters." (Tr. 254.) On another occasion, when Rasmussen expressed the belief that the difficulties within Mine-Mill came because of too much interference from the Communist Party within the union, President Robinson's only reply was that he was sorry that Rasmussen had engaged in "this red baiting attack." (Tr. 262.) Included in a statement of policy adopted by the International Executive Board in 1946 was the following:

Members of this union shall be judged on the basis of their contribution and loyalty to the organization and nothing else. "Baiting" of Negroes, Catholics, Protestants, Jews, "reds," C.C.F.'ers—is denounced as a form of religious and political persecution contrary to the aims of democratic unionism. (A. G. Ex. 10, p. 131.)

At the 1947 convention, Robinson, at the time no longer President but a delegate to the convention, took the floor and advanced the position that the monopoly capitalists will continue to "red-smear" any progressive political think-

ing to prevent labor achieving the things to which it is entitled as the producers of the wealth of the country. (M. M. Ex. 120, pp. 210-214.) By order of Maurice Travis, International President at the time, the speech of Robinson was to be printed in the "Union." (p. 215) Resolutions were passed at the 1948 convention condemning "red-baiting" as tactics used by the enemies of labor to destroy trade unions and enslave the workers (M. M. Ex. 121, pp. 157-158 and 166-167). The 1952 convention passed a resolution denouncing the "red-baiting" tactics used by the C.I.O. in branding Mine-Mill as Communist controlled (M. M. Ex. 125, pp. 49 and 50). Respondent's witnesses Arthur Porter, Juan Aranda, Jr., Gabriel Cedello, Jr., Luther Church, and Walter Romero all used the term "red-baiting" to mean that the Union was charged with being Communist or Communist controlled. (Tr. 7682; 8979; 8777; 9246-47; 8748) Respondent's witness Stern testified that some workers who left Mine-Mill had been affected by "red-baiting," the charges that the Union was run by Communists. (Tr. 8050.) Stern defined "red-baiting" as smearing a person with epithets because of positions taken at any particular time and trying to injure the person or destroy him by use of epithet rather than by use of reason. (Tr. 8275) According to Stern, "red-baiting" amounts to classing an argument as a Communist argument without trying to meet the argument on its merits. (Tr. 8200-01)

220. The findings made above on the use by respondent of the term "red-baiting" in reply to charges of Communism within the Union are not to be taken as putting any special significance on such use. The bearing upon the issues in this proceeding is that respondent neither here, nor throughout the many years of charges within the Union itself of Communist domination, has denied the existence of grounds for the charges. Rather than deny that officers have been Communist Party members and that Communist policy has been implemented in the Union, the excusing term of "red-

baiting" has been used. The facts adduced in this proceeding show that denials could not truthfully have been made. Moreover, the Communist leaders of respondent have successfully prevented the passage of any regulations which would bar Communists from holding positions of leadership and trust (see *supra*). And, various of respondent's own witnesses testified that they had no objection to Communists holding office in the Union.

CONCLUDING FINDINGS

221. The International Union of Mine, Mill and Smelter Workers, respondent, is an organization in the United States within the meaning of section 3 of the Subversive Activities Control Act of 1950, and is a labor organization as defined by section 2 of the National Labor Relations Act, as amended. Respondent is not formally affiliated with any other labor federation or labor organization.

222. It is quite clear from the evidence that many important functionaries of respondent are and have been members of the Communist Party, and that other important functionaries are persons who are and have been amenable to the Communist Party. This situation prevails with respect to the International Executive Board to the
 93 extent that the Executive Board is and for many years has been dominated and controlled by the Communist Party members on the Board. A substantial number of the staff members who assist the Executive Board are and have been members of the Communist Party.

223. The International Executive Board, which consists of four officers and a Board member for each of the various districts, exercises the powers, among others: to appoint officers and Board members to fill vacancies that occur between biennial elections; to hire and fire the International staff members, including International representatives who deal with and service the local unions; to appoint the chairman and members of the convention committees;

and, to direct and control the content and publication of the official Union organ.

224. It was conceded by counsel for respondent that the International Executive Board "has the power to make decisions or to make policy in this union between conventions." (Tr. 5450) This was also established by the evidence. Moreover, the Communist Party members have gained and maintain the full faith, confidence and support of the majority of the convention delegates to the extent that the conventions have consistently taken actions and adopted policies and programs favored by these officials, and the conventions have consistently rejected matters not favored by these officials. In a nutshell, the record established that the majority of the convention delegates have accepted without question or outward concern—"take their word for it" as one of respondent's witnesses testified—the views expressed and the policies advanced by those on the governing board who are Communist Party members and those who are amenable to the Communist Party.

225. Communist Party members together with persons who are both amenable to the Communist Party and submissive to the actions of the Party members, comprise the majority of the International Executive Board. There can be no real doubt from the record as a whole, and the evidence, which stands mostly un rebutted, was convincing, that respondent is and for many years has been substantially directed, dominated, and controlled by a group of Communist Party members.

226. To a quite significant extent the power to fill vacancies has been exercised in the appointment of members of the Communist Party to positions on the governing board, and the board has hired an impressively substantial number of Communist Party members to staff positions in the Union. The persons occupying dual roles of members of the Communist Party and officials of respondent have on numerous occasions met with high functionaries of the Communist Party to discuss the affairs of respondent.

94 These officials of respondent as well as a number of the individuals who were hired as International representatives have attended and participated in Communist Party meetings at which the affairs of respondent were among the subject matters. The record contains instances where functionaries of respondent have reported to the Communist Party on the affairs of respondent and on the activities of functionaries of respondent in performing their duties in respondent.

227. The course of conduct over extended periods of respondent's officials Raymond Dennis and Irving Dichter are illustrative.¹ The Communist Party was instrumental in Dennis becoming a member of respondent's leadership group. Arrangements were made at a Communist Party meeting for his predecessor on the Mine-Mill Board, Communist Jesse Van Camp, to step down in order that Dennis could be nominated. Dennis in 1951, not long after becoming a top leader of respondent, hired Communist Party member Gardner to be an International representative in Dennis' district of the Union, and Dennis instructed Gardner in addition to his Union duties to work for and in behalf of certain organizations in which the Communist Party had strong interests. Gardner in fact devoted considerable time and effort working with these groups while being paid by respondent. Dennis in 1951 met with the Communist Party official in charge of organizing Party branches in various labor unions, and Dennis discussed respondent's affairs with this Party official. In 1953, Dennis discussed Mine-Mill matters with officials of the Communist Party who were operating underground.

228. Irving Dichter was shown as long ago as the year 1942 to have attended and participated in closed meetings of the Communist Party at which Mine-Mill matters were

¹ No single item of evidence, in and of itself, conclusively established the ultimate facts and the determinations must, of course, be made upon considerations of the record as a whole. Where subsidiary facts already found are repeated in this section they are for purposes merely of illustrating the type of evidence involved.

discussed. In 1943, Dichter sent a Mine-Mill clerical employee who was a member of the Communist Party to see a high State officer of the Communist Party for instructions on Communist Party policy. More recently, Dichter, in 1953, attended a meeting of the Trade Union Commission of the Communist Party held to plan Communist Party activity at the C.I.O. national convention. This was after Mine-Mill had been expelled from the C.I.O. In 1954, Dichter was made a member and participated in meetings of a concealed or secret board of the Communist Party. Dichter in 1955 investigated for the Communist Party the activities of a Mine-Mill staff official and Party member. Also in 1955, Dichter referred to respondent as one of the last voices of the Communist Party in the trade union movement. Dichter has taken an active role at the conventions of respondent. He spoke at the 1949 convention in high praise of the Soviet Union.

229. The Communist Party activities of the Party members on respondent's staff were equally revealing. Illustrative are the facts that: in 1954 the editor of respondent's official organ reported at a Communist Party meeting on Lenin's book "What Is To Be Done";¹ in late 1950 an individual who a few years later was made an International representative on respondent's staff, taught classes at a Communist Party school to educate the Party members present on applying the theory of Marx and Lenin,² and Mine-Mill members were among the students at these classes; a Mine-Mill clerical employee, still with the Union at the time of the hearing, was in charge of checking security at a meeting in 1952 of the Colorado State Committee of the Communist Party and was shown in attend-

¹ The theories of Marx and Lenin, some of which are contained in Lenin's book "What Is To Be Done," were found by this Board in *Attorney General v. Communist Party of the United States*, affirmed *sub nom Communist Party v. Subversive Activities Control Board*, 367 U.S. 1 (1961) to be part of the doctrine followed by the Communist Party.

² See footnote "1", above.

ance at Party meetings in 1954; Communist Party meetings have been held at the homes of various of the Mine-Mill staff members.

230. In the history of respondent the issue of Communism has brought about the loss of considerable members, the expulsion of the Union from the C.I.O., the dismissal from the Union of anti-Communist staff members, and secessions by a number of local unions. Respondent chose to suffer expulsion from the C.I.O. rather than accept a requirement that Communist Party members be barred from Union office, and respondent since has consistently adhered to a policy of refusing to change its constitution so as to bar Communists from office in the Union. Various persons who held functionary positions in respondent have been discharged after taking anti-Communist positions. Persons who were members of the Communist Party and were expelled from the Party were thereafter discharged from the Union. The situation within Mine-Mill International, based on this record, has been and is one where there is an affinity for the Communist Party.

231. The majority of the leadership of the International has consistently pursued and advanced policies and programs in opposition to the Government of the United States in its foreign policies and in the domestic laws and programs designed to combat the Communist movement in the United States. The positions taken and advanced by respondent have never deviated from the positions
96 taken and advanced by the Communist Party of the United States. There has been for many years a large part of the time and effort of respondent devoted to advancing policies and programs similar to the policies and programs of the Communist Party and which were removed from the normal economic and welfare matters usually the subject of labor union activity.

232. The effective management of the affairs of the Union is conducted by the International Executive Board with the assistance of the staff personnel. By reason,

among other things, of being active in both the Union and the Communist Party, attending Communist Party conclaves, meeting with high functionaries of the Communist Party, and taking positions and carrying out activities consistent with Communist Party policy, the conclusion is required that the Communist Party members on the Executive Board have knowledge of the nature and purposes of the Communist Party. (See section 13 (A)(e)(1) of the Act.)

233. To a quite substantial extent the policies of respondent are and for many years have been formulated and carried out by or on the advice of the Communist Party members holding leadership positions in respondent and by those leaders who, while not shown by the evidence to be members of the Party, were shown to be amenable to the Communist Party and to cooperate closely with the Party member-officials. (See section 13 (A)(e)(2) of the Act.)

234. The Union is being and for many years has been used to a significant extent to further and promote the objectives of the Communist Party, particularly with respect to the Party objectives as to the trade union movement. This was evidenced, among other substantial matters, by the fact that top leaders and important staff members of respondent have met with officials of the Communist Party, who were not members of respondent, for the purpose of planning and discussing respondent's affairs, and by the success of the leadership of the Union in keeping the Union oriented along Communist lines. (See section 13 (A)(e)(3) and (4) of the Act.)

235. While there was not sufficient evidence to show a technical affiliation of respondent with the Communist Party of the United States there was, as stated, strong showing that respondent has been and is working in behalf of the Communist Party upon a consistent basis over a long period of time. (See section 13 (A)(e)(5) of the Act.) The Communist Party members in respondent have, with but few exceptions, concealed the fact of their Party mem-

bership and continue to do so. (See section 13 (A)(e)(6) of the Act.)

236. The aid and support flowing to the Communist Party from respondent and its controlling leadership has been real, substantial and significant. Through respondent, the Communist Party has acquired and continues to have a dependable foothold in the labor movement in the United States. The Communist orientation of the Union and the blind faith with which the majority of the members follow and support the Communists holding leadership positions, constitute respondent an organization through which the Communist Party can work with respect to a sizable section of the working class.

237. On the basis of the entire record, it is concluded that respondent (A) is substantially directed, dominated, or controlled by individuals who are, or within three years have been actively engaged in, giving aid or support to the Communist Party of the United States, a Communist-action organization, and (B) is serving, or within three years has served, as a means for the giving of aid or support to such Communist Party.

238. It follows that respondent is a Communist-infiltrated organization as defined in the Act.

RECOMMENDATION

It is recommended that the Board issue and cause to be served upon each party to this proceeding an order granting the determination sought by the petition of the Attorney General of the United States that respondent is a Communist-infiltrated organization within the meaning of section 3(4A) of the Act.

FRANCIS A. CHERRY
Member of the Board—Examiner

Washington, D. C.
December 26, 1961

SUBVERSIVES ACTIVITIES CONTROL BOARD

Docket No. 116-56

ROBERT F. KENNEDY, ATTORNEY GENERAL
OF THE UNITED STATES, PETITIONER

v.

INTERNATIONAL UNION OF MINE, MILL AND
SMELTER WORKERS, RESPONDENT

ORDER OF THE BOARD

The Board, after full hearing upon a petition of the Attorney General, having this day issued its findings as to the facts, and having determined that respondent is a Communist-infiltrated organization, it is

ORDERED that the petition of the Attorney General be and it is hereby granted and the International Union of Mine, Mill and Smelter Workers is declared to be a Communist-infiltrated organization within the meaning of section 3 of the Subversive Activities Control Act of 1950, as amended by the Communist Control Act of 1954.

By the Board (Chairman Lee not participating).

FRANCIS A. CHERRY, Member
THOMAS J. DONEGAN, Member
JAMES R. DUNCAN, Member
EDWARD C. LINDSEY, Member

May 4, 1962
Washington, D. C.

JOINT APPENDIX—PART II

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,135

INTERNATIONAL UNION OF MINE, MILL and SMELTER
WORKERS, *Petitioner,*

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, *Respondent.*

On Review of Order of the Subversive Activities Control Board

United States Court of Appeals
for the District of Columbia Circuit

FILED DEC 26 1963

Nathan J. Paulson
CLERK

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,135

INTERNATIONAL UNION OF MINE, MILL and SMELTER
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v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, *Respondent*.

On Review of Order of the Subversive Activities Control Board

JOINT APPENDIX—PART II

IN THE SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 116-56

HERBERT BROWNELL, JR., *Petitioner,*

v.

INTERNATIONAL UNION OF MINE, MILL AND SMELTER
WORKERS, *Respondent.*

ON PETITION FOR AN ORDER DETERMINING THAT THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS IS A COMMUNIST-INFILTRATED ORGANIZATION

Petition

(Filed July 28, 1955)

Comes now Herbert Brownell, Jr., Attorney General of the United States, pursuant to the provisions of section 13(A) of the Subversive Activities Control Act of 1950, as amended by the Communist Control Act of 1954, (hereinafter referred to as the Act) and, upon information and belief, alleges the following facts relating to the character of the International Union of Mine, Mill and Smelter Workers, hereinafter referred to as the Union.

I.

The said Union was originally founded at Butte, Montana, on May 15, 1893, under the name Western Federation of Miners and continued under that name until December of 1916, at which time its name was changed to the International Union of Mine, Mill and Smelter Workers. From the date of its origin until 1938 it was affiliated with the American Federation of Labor, and from 1938 until February, 1950, it was affiliated with the Congress of Industrial Organizations as a participating member. In February 1950, the said Union was expelled from the Congress of

Industrial Organizations by the official action of that body, on the ground that its policies and activities were consistently directed toward the achievement of the programs and purposes of the Communist Party of the United States of America. Since its expulsion from the Congress of Industrial Organizations as aforesaid, the Union is not an affiliate in good standing of a national federation or other labor organization whose policies and activities have been directed to opposing Communist organizations, Communist foreign governments and the world Communist movement.

II.

The membership of the said Union is made up of persons employed in mining and related industries and engaged principally in mining and processing certain non-ferrous metals including copper, lead, zinc, manganese, bauxite and uranium, all of which are highly essential to the national defense of the United States.

III.

The said Union is now and for a considerable period of time prior to the filing of this petition has been a representative of employees (i.e. persons described in paragraph II hereof) within the meaning and for the purposes of section 7 of the National Labor Relations Act, as amended, and serves as the exclusive bargaining unit under section 9 of the said Act.

IV.

The said Union publishes and disseminates every two weeks as its official organ a periodical known as the Mine-Mill Union (formerly known as The Union).

V.

The Communist Party of the United States of America is, and during the three year period preceding the filing

of this petition and prior thereto has been, a Communist-action organization.

VI.

The Union of Soviet Socialist Republics, the Chinese People's Republic, the Republic of North Korea, the Peoples Democracies of Czechoslovakia, Poland, Hungary, Rumania and Bulgaria are and for varying periods of time preceding the filing of this petition have been foreign Communist governments.

VII.

The World Federation of Trade Union is, and during the three year period preceding the filing of this petition and prior thereto has been, an organization constituting a part of the world Communist movement.

VIII.

It has been the policy of the aforesaid Communist Party and members thereof, during the three year period preceding the filing of this petition and prior thereto, to establish, maintain and promote organizations commonly known and classified by law as Communist-front organizations, for the purpose of aiding and supporting the aims and objectives of the Communist Party, Communist foreign governments and the world Communist movement, which organizations are Communist organizations within the meaning of paragraph 5 of Section 3 of the Internal Security Act of 1950, as amended.

IX.

At the date of the filing of this petition, and for many years prior thereto, the organizational form of the International Union of Mine, Mill and Smelter Workers consists and has consisted of an international organization and eight subordinate district organizations, each having juris-

diction over separate and distinct geographical areas, and local units. The effective management of the said Union is and for many years has been vested in an executive organization consisting of a president, three vice-presidents, a secretary-treasurer, an international board made up of the foregoing officers and eight district board members, each representing one of the said subordinate districts, and an executive staff, whose members are subject to appointment and removal by the president with the approval of the international executive board, including an assistant to the president, an editorial staff in charge of the Union publication, a research director, an educational director, a legislative representative, office personnel, regional directors and international representatives or organizers.

X.

The persons comprising the aforesaid effective management are and for three years preceding the filing of this petition and prior thereto have been actively engaged in giving aid and support to Communist organizations, foreign Communist governments, and the world Communist movement, and during the same period of time the said Union, through its effective management, and without the knowledge of the great majority of its members, has been made to serve and is serving as a means of giving aid and support to such organizations and governments, and to the world Communist movement; in support whereof Petitioner alleges the following facts and circumstances:

A. The effective management of the Union, as described in paragraph IX hereof, is dominated and controlled by a clique of persons including members of the executive organization, the international executive board, the executive staff and others who are and for a period of three years preceding the filing of this petition and prior thereto have been members of Communist organizations with knowledge of their nature and purpose, and who during

the same period of time have been engaged in giving aid and support to such organizations, to Communist foreign governments, and to the world Communist movement which aid and support consists and has consisted, among other things, of the following:

1. Recruiting and soliciting members for Communist organizations, acting as sponsors, organizers, speakers, officers and staff workers of such organizations and contributing and collecting funds for the same.

2. Expulsion from the Union of any member thereof who opposed Communist domination of the Union or acted in a manner contrary to the interests of Communist organizations; and expulsion from Communist organizations of any Union member thereof who acted in like manner.

3. Evasion and circumvention of the laws and procedures thereunder administered and enforced by agencies of the government of the United States, including, among others, the National Labor Relations Act and the Labor Management Relations Act, and the obstruction of the investigations of Congressional Committees and subcommittees, including, among others, the House Committee on Un-American Activities, the Senate Committee on Labor and Public Welfare and the Senate Judiciary Subcommittee to investigate the administration of the Internal Security Act and other Internal Security Laws.

4. Use of the organizations and facilities of the said Union to secure official action and to disseminate propaganda in support of the aims and objectives of Communist organizations, and the world Communist movement; and to support the aims, objectives, policies, aggressions and conquests of Communist foreign governments.

5. Collaboration and conspiracy with other persons, who are and were members, representatives and func-

tionaries of the Communist Party, but not members, officials or employees of the said Union to accomplish the acts, aims and purposes set forth in subsections 1-4 inclusive of this paragraph.

B. At all times during the three year period preceding the filing of this petition and prior thereto the aforesaid clique of persons, acting together and sometimes in collaboration with other persons who are (and were) members, representatives and functionaries of the Communist organizations but not members, employees or officials of the Union, such as but not limited to Gil Green, John Williamson, Arthur Bary and John Hellman, have formulated the policies of the said Union and the same have been carried out pursuant to their direction and advice, that is to say:

1. The aforesaid clique of persons has maintained and exercised control over the organization and proceedings of the international conventions of the Union by two principal devices, among others, i.e., (a) by secret meetings of members of the effective management and other members of the Communist organizations immediately preceding such conventions to formulate a program and to plan strategy for its adoption and (b) by selecting members of Communist organizations as chairmen and members of vital committees including the credential committee, the resolutions committee and the nominating committee.

2. Members of Communist organizations in the effective management have maintained a majority on the international executive board by the following devices, among others, i.e., (a) by filling vacancies occurring between conventions with members of Communist organizations through exercise of the power of appointment, (b) by promoting the subsequent election of such appointed persons through control of the convention organization including the nominating com-

mittee thereof, (c) by withholding from the locals, contrary to the constitution of the said Union, a list of all locals, addresses and the officers thereof in order to prevent the development of any concentrated combined and effective opposition, (d) by utilizing the power and influence of regional directors and international representatives and organizers to influence the vote of locals and (e) by using the Union publication, contrary to the said Union constitution, to support the candidates so selected.

3. The aforesaid clique, through the exercise of the power of appointment, has packed the executive staff and office personnel in the international headquarters with members of Communist organizations to the practical exclusion of persons who are not members of such organizations.

4. The aforesaid clique, through the exercise of the power of appointment, has employed members of Communist organizations as regional directors, international representatives and organizers to the end of maintaining and exercising control over local units.

5. The effective management has used the Union publication as an instrument to support and promote the aims and objectives of Communist organizations, and to this end members of such organizations, such as but not limited to Graham Dolan, Morris Wright and Roderick Holgrem have been employed on the editorial staff, and these persons, in collaboration with Maurice Travis and other members of the effective management have controlled the policies of and determined the material to be published in the said paper.

6. When vacancies have occurred in the executive organization, staff employees, office personnel and field representatives, including elective officials, the effective management has followed the policy of replacing non-Communists with members of Communist organi-

zations and of replacing Communist with other Communists. In many instances the effective management has failed to appoint staff employees from membership of the Union, but contrary to the Union constitution, has gone outside of the said membership in order to employ members of a Communist organization.

7. The policies of the said Union have been initiated by members of the effective management, acting together and sometimes in collaboration with other persons who are (and were) members, representatives and functionaries of Communist organizations, but not members, employees or officials of the Union, have been ratified by the international executive board and by the international conventions by the means and devices aforesaid, and have been carried out pursuant to the direction and advice of said members of the effective management and other persons as aforesaid.

C. The personnel and resources of the Union are and within the three year period preceding the filing of this petition and prior thereto have been used to further and promote the objectives of Communist organizations, Communist foreign governments and the world Communist movement and during the same period of time the said Union has contributed funds and other material assistance to Communist organizations and has received material assistance from the same, that is to say,

1. The members of the effective management have used their offices and positions to further and promote the aforesaid objectives (a) by maintaining their own membership in said organizations, and by acting according to the advice and direction of other Communist Party members, representatives and functionaries as aforesaid, (b) by using the international executive board to formulate and carry out policy in accord with said objectives, (c) by influencing and controlling the actions of delegates to union conventions in the

election of officers, the adoption of policy and the passing of resolutions by the manner and means aforesaid, (d) by controlling the action of locals through the influence of regional directors and international representatives and organizers, (e) by acting as delegates, speakers and sponsors for Communist organizations, (f) by subscribing to, selling and distributing Communist Party literature, and (g) by using the office staff to assist in the formulation and in the carrying out of policies in furtherance and for the promotion of said objectives.

2. The effective management has used the resources of the said Union to further and promote the aforesaid objectives (a) by contributions of Union funds to Communist organizations, (b) by payment of salaries from Union funds to Communist Party members in the executive organization, who use and have used their offices and positions to further and promote said objectives, (c) by using Union funds to pay the expenses of delegates to conventions and meetings of Communist organizations and (d) by using the Union office, office equipment, facilities and supplies to prepare literature and propaganda in support of said organizations and objectives, and by using the mailing lists of the Union for the dissemination thereof.

3. The effective management has used the international organization, meetings of the international executive board and reports thereof, conventions, convention resolutions and reports and minutes thereof, the Union publication and other literature to further and promote the objectives of Communist organizations, Communist governments and the world Communist movement and without deviation has followed, advocated, supported and adhered to the policies and objectives of said organizations, governments and movement in the following instances, among others:

(a) Prior to the signing of the Hitler-Stalin Pact of August, 1939, the Union advocated and supported the policy of the Soviet Union with respect to the united front and collective security against aggressor nations; demanded revision of the Neutrality Act; and boycott of German, Italian and Japanese goods.

(b) Immediately following the signing of the Hitler-Stalin Pact, and the outbreak of World War II, the Union abandoned its advocacy of the united front and collective security; supported the action and policy of the Soviet Union; branded the war as an imperialist war; upheld and defended the seizure of Polish territory, the absorption of the Baltic Republics and the invasion of Finland by the Soviet Union; opposed all forms of military preparedness in the United States, including expansion of the armed forces under the Selective Service Act; opposed any form of aid to the nations allied against Germany and Italy and demanded the strict neutrality of the United States and the strict enforcement of the Neutrality Act.

(c) Immediately following the invasion of Russia by Hitler's armies on June 22, 1941, the Union again reversed its position, characterized the war as a just war; demanded the repeal of the Neutrality Act, demanded all-out aid to the enemies of Hitler; and denounced isolationists.

(d) After the entry of the United States into World War II, the Union demanded the immediate opening of a second front in Europe; advocated severance of diplomatic relations with Spain; urged that the Warsaw Government be invited to the San Francisco Conference rather than the exiled Polish Government in London; opposed the admission of

Argentina to the United Nations; and urged the severance of diplomatic relations with Argentina.

(e) Following the cessation of hostilities in World War II, the Union supported the violent revolutionary activities of Communist forces in such countries as Greece and China; supported the Communist government of Yugoslavia, while that government was affiliated with the Communist Information Bureau, and condemned it after its defection and expulsion therefrom; denounced and condemned the government of the United States for failure to come to an agreement with the Soviet Union on problems arising out of the production and control of nuclear weapons; opposed the Truman Doctrine, the Marshall Plan and the Point Four Program; urged diplomatic recognition of the People's Republic of China, and the seating of its representatives in the United Nations; opposed the rearmament of Germany and Japan; and give unqualified support to the Stockholm Peace Petition.

(f) Following the invasion of South Korea by the Communist armies of North Korea in June of 1950, the Union condemned the defense of South Korea by the United States and the United Nations and in 1951 charged that the conflict was in the interest of big business and in 1953 charged that tungsten and not independence was the real issue; urged the withdrawal of American forces from Korea; supported the Chinese proposals with respect to the exchange of war prisoners in 1953 and condemned President Eisenhower for not bringing about a speedy end to the conflict.

(g) The Union opposed American aid to the Viet Nam government of Indo-China; opposed American aid to Indonesia during its struggle against the so-

called "National Liberation" forces; condemned the policy of United States government in Guatemala in 1954; accused the United States of originating the "Cold War", and of responsibility for continuing it; accused the United States of converting the United Nations into an instrument of imperialism; urged and supported "peaceful coexistence".

(h) The Union has opposed legislation enacted for the control and punishment of subversive activities, such as the Smith Act, the Foreign Agents Registration Act, the Taft-Hartley Act and the Communist Control Act; opposed the Selective Service Act, the draft extension act and the Defense Production Act; denounced Congressional Committees and other government bodies for investigating un-American and subversive activities; denounced government law-enforcement agencies, including the Federal Bureau of Investigation, the Immigration and Naturalization Service and opposed the registration and deportation of aliens; opposed the Federal employee loyalty program; supported and urged its members to support the Progressive Party; advocated clemency for Julius and Ethel Rosenberg, the "Trenton Six", Willie McGee and the "Martinsville Seven", charged the United States government with the practice of genocide; and denounced American statesmen and industrialists as "warmongers".

D. Members of the effective management of the said Union have, during the three year period preceding the filing of this petition and prior thereto, secretly and without the knowledge of the Union's membership, established and maintained affiliation of the Union with the Communist Party and other Communist organizations by (1) their own membership both in the Union and in Communist organizations; (2) collaborating with representatives and function-

aries of the said Party who were not members, employees or officials of the Union in the formulation of Union policy; (3) adopting and carrying out policies within the Union pursuant to the directions and advice of such representatives and functionaries; (4) making reports concerning Union matters to such representatives and functionaries; (5) acting, in the discharge of their official duties, in and for the interests of Communist organizations; and (6) by converting the said Union into an instrument to advance and promote the aims and objectives of Communist organizations, foreign Communist governments, and the world Communist movement, as aforesaid.

E. The persons comprising the effective management of the said Union have concealed from the membership of the Union their own affiliation and the affiliation of the Union with Communist organizations in various ways, among which are the following: (1) failure to disclose their own membership in such organizations; (2) denying such membership or giving evasive answers when questioned concerning it by other members of the Union; (3) purporting to resign from the said organizations while secretly maintaining membership and affiliation therein; (4) by holding secret meetings and caucuses, unknown to the membership for the purpose of formulating Union policy in conformity with the aims and objectives of Communist organizations and devising strategy for the adoption thereof; (5) by meeting secretly with representatives and functionaries of the Communist Party for the same purposes; and (6) by failure to disclose to the membership the role of such representatives and functionaries in the formulation of Union policy. As a result of the said concealment and failure to disclose, the great majority of the membership is without knowledge of the facts that the said Union is and has been under the domination and control of members of Communist organizations and has been made into an instrument for the promotion and advancement of the aims and objec-

tives of Communist organizations, foreign Communist governments and the world Communist movement.

XI.

Wherefore, the Attorney General petitions this Board for an order, after appropriate proceedings, determining that the International Union of Mine, Mill and Smelter Workers is a Communist-infiltrated organization as defined by Section 3 of the Internal Security Act of 1950, as amended by the Communist Control Act of 1954.

Answer

(Filed January 23, 1956)

Answering the petition, Respondent, by its President, states:

FIRST DEFENSE

The Subversive Activities Control Act of 1950, as amended by the Communist Control Act of 1954, and the petition violate the Constitution of the United States for the reasons set forth in the motion to dismiss the petition.

SECOND DEFENSE

The participation in this proceeding of Chairman Thomas J. Herbert of this Board, and of Board member Harry P. Cain will render the proceeding illegal, null, and of no effect by virtue of the allegations set forth in Respondent's motion for preliminary hearing to determine if certain members of the Board should be disqualified.

THIRD DEFENSE

The petition is an abuse of the Board's process by virtue of the allegations set forth in Respondent's motion for

preliminary hearing to determine whether the petition is an abuse of the Board's process.

FOURTH DEFENSE

1. Answering section XI of the petition, Respondent denies that it is a Communist-infiltrated organization, and alleges that it is a labor organization governed only by its members, and that its objects are stated in Article 1, Section 2 of its Constitution:

"The objects of this organization shall be to unite the various persons working under our jurisdiction into one central body, to practice those virtues that adorn society and remind man of his duty to his fellow men, to elevate his position and to maintain the right of the workers to increase the wages and improve the conditions of employment of our members by legislation, conciliation, joint agreements or strikes."

2. Respondent further alleges that it is one of the oldest labor organizations in the United States, and that at all times during its existence, including the three (3) years preceding the filing of the petition, it has sought to improve the conditions of its members and other workers and their families and has made many substantial and noteworthy contributions to their material well-being, and that its aims, policies, and activities are and have been in the best interests of its members and other workers and their families, the communities in which they live, and the American people as a whole.

FIFTH DEFENSE

1. Answering section I of the petition, Respondent admits the allegation, except that it denies that the true ground for its separation from the Congress of Industrial Organizations is as alleged in the third sentence.

2. Answering section II of the petition, Respondent admits the allegations, except that it denies that any of its members are engaged in the mining or processing of bauxite and that any of its members are engaged in the mining or processing of uranium in the United States, except that it admits that some of its members are engaged in the mining of uranium in Canada.

3. Answering section III of the petition, Respondent admits the allegation, except that it denies that it "serves as the exclusive bargaining unit" under section 9 of the National Labor Relations Act as amended, but it admits that it serves as the exclusive collective bargaining representative of employees under said section.

4. Answering section IV of the petition, Respondent admits that it publishes and disseminates as its official organ a periodical known as the Mine-Mill Union, except that it denies that it is published every two weeks, but it admits that it is published once a month.

5. Answering sections, V, VI, VII, and VIII of the petition, Respondent is without knowledge of the matters alleged, in that said allegations are not factual allegations but contain legal definitions and conclusions the validity of which are presently under review in the courts of the United States.

6. Answering section IX of the petition, Respondent denies the allegations in the first sentence, except that it admits that it consists of seven (7) districts and an autonomous organization in Canada having its own officers, and denies the allegations in the second sentence, except that it admits that between its annual Conventions, its Executive Board, consisting of a president, two vice-presidents, and a secretary-treasurer, who are its officers, and of seven (7) Executive Board members, is responsible for its affairs. Respondent also alleges that its highest authority and its effective management reside in its member-

ship, as alleged in the Fourth Defense, and that its policies are determined by its membership at its annual conventions.

7. Answering section X of the petition, Respondent denies each and every allegation, except:

a. to the extent that Respondent is without knowledge for the reason set forth in paragraph 5 of this Fifth Defense:

b. to the extent that Respondent is without knowledge of any affiliations and activities of its officers and employees except such activities as are in fulfillment of their express duties with Respondent, and is particularly without knowledge of any affiliations and activities for the purposes alleged in section X and in its several sub-sections:

c. with respect to sub-section C. 3. (a), Respondent admits that before World War II it supported in general the foreign policy of President Franklin D. Roosevelt and of the Congress of Industrial Organizations, and expressed its opposition to the aggressive policies of those countries which later became the enemies of the United States in World War II;

d. with respect to sub-section C. 3. (b), Respondent admits that during the period alleged, it, together with the Congress of Industrial Organizations and other organizations, individuals, and public officials, advocated a policy of neutrality for the United States;

e. with respect to sub-section C. 3. (c), Respondent admits that during the period alleged, it together with the Congress of Industrial Organizations and other organizations, individuals, and public officials, advocated support to the Allies, including the Soviet Union, and that it "denounced isolationists";

f. with respect to sub-section C. 3. (d), Respondent admits that during the period alleged, it supported President Roosevelt's pledge for a second front in Europe, and alleges that it made substantial, outstanding, and significant contributions to the war effort of the United States which received official and enthusiastic recognition from government officials and agencies concerned with the war effort:

g. with respect to sub-section C. 3. (e), Respondent admits that its position on atomic weapons has been that their use should be outlawed under international control and that the nations of the world should cooperate in the development of atomic energy for peaceful purposes; admits that it opposed the Truman Doctrine, the Marshall Plan, and the rearming of the aggressive nations which were the enemies of the United States in World War II; denies that it opposed the Point Four program, but admits that it has criticized its execution, and further alleges that it has advanced a comprehensive plan of its own which would realize the stated objectives of the Point Four program with greater benefit to its own members, the American people as a whole, and other peoples; and admits support of movements which enable the people of the United States to give voice to their desire for peace;

h. with respect to sub-section C. 3. (f), Respondent admits that it was critical of President Eisenhower's delay in fulfilling the campaign pledge he made in 1952 to make every effort to bring the Korean War to an early and honorable conclusion;

i. with respect to sub-section C. 3. (g), Respondent admits that it has urged that differences among nations be settled by negotiations rather than by war;

j. with respect to sub-section C. 3. (h), Respondent admits that it has opposed the Smith Act, the Taft-

Hartley Act, and the Communist Control Act, but alleges that it has done so only because such legislation violates the Bill of Rights or is harmful to its members and other working people; admits that it has opposed legislation for peacetime drafts for military service; admits that it opposed the Defense Production Act, but alleges that it did so on the ground that it was unfair to labor and to consumers; admits that it has opposed Congressional committees which violate basic rights under the guise of investigating "subversive activities"; admits being critical of government agencies when they have violated basic rights; admits that it has opposed and does oppose the Walter-McCarran Act; admits that it has criticized the violation of the rights of federal workers; admits that it has pursued a policy of independent political action which led to the endorsement of the Progressive Party in 1948, but alleges that the same policy resulted in endorsement of candidates of the Democratic and Republican parties in 1948 and in other years; admits that when certain "American statesmen and industrialists" have spoken or acted as "warmongers", it has criticized them as "warmongers".

SIXTH DEFENSE

In further answer to the petition as a whole but particularly to Section X, Respondent alleges that the only action and policies for which it assumes responsibility, under its Constitution, are those of its annual Conventions and of its Executive Board between Conventions, and that the policies and actions of individual officers, employees, members, or subordinate bodies are not necessarily the policies and actions of Respondent.

SEVENTH DEFENSE

In further answer to the petition as a whole but particularly to section X, Respondent alleges that by virtue

of its policy of freedom of expressions to its officers, employees, members, and subordinate bodies, their expressions of opinion, whether or not they appear in Respondent's official organ, are their own and not necessarily those of Respondent

EIGHTH DEFENSE

In further answer to the petition as a whole but particularly to section X, Respondent alleges that its actions and policies which are admitted in this answer have also been those of other labor organizations, and of public officials and other Americans, and are actions and policies which Respondent, like others, is and has been free to pursue by virtue of the Bill of Rights and the democratic traditions of the labor movement.

Ruling on Respondent's Motion Filed February 2, 1961

(Filed Feb. 15, 1961)

At the start of the hearing on February 2, 1961, respondent filed a written motion, based on the decision issued January 23, 1961, by the Supreme Court of the United States in *Campbell v. United States* (No. 53, Oct. Term, 1960), seeking redetermination of previous determinations that certain documents were not producible to respondent for impeachment purposes. Petitioner orally opposed the motion and both sides were heard in argument (see tr. 8889-8890; 8931-8964). The situation arose as follows:

During the presentation of petitioner's case in chief, respondent made motions, *inter alia*, for the production for impeachment purposes of prior reports made by sixteen of petitioner's witnesses to agents of the Federal Bureau of Investigation on subject matters about which they had testified. Respondent also moved for relevant prior statements made by petitioner's witnesses to government at-

torneys who interviewed the witnesses. Documents containing prior information furnished the F.B.I. by four of the sixteen witnesses were produced to respondent;¹ with respect to six witnesses petitioner elected not to produce the F.B.I. reports and the testimony of the witnesses was stricken; and, as to the remaining six of the witnesses the relevant F.B.I. reports were submitted to the Hearing Member for *in camera* determination whether they constituted "statements" which should be made available to respondent under the Jencks statute, 18 U.S.C. 3500.

Upon examination of these questionable documents the Hearing-Member found that the doubt was not clearly resolved from the mere face of the documents themselves and petitioner was given the opportunity to present extrinsic evidence. Thereupon petitioner presented affidavits of the F.B.I. agents who had interviewed the witnesses, concerning the manner in which the interviews were conducted and the agents' reports written. A copy of the affidavits was given to respondent who was heard thereon. Over respondent's objection the affidavits were received and considered. On the basis of the documents themselves and of the affidavits it was determined and ruled that the interview reports were not "statements" of the witnesses so as to be producible to respondent. Respondent's motions to call the F.B.I. agents who had interviewed the witnesses and executed the affidavits were denied. Respondent's instant motion contends in part "1." that it was error to receive and consider the affidavits instead of calling the agents to testify in person or requiring petitioner to call them.

The six witnesses as to whom the F.B.I. reports were determined not to be "statements" were, in the order of their appearances—Rasmussen, Dirdak, Bush, Evering-

¹ F.B.I. reports of relevant information furnished by the three witnesses who testified subsequent to the sixteen here involved were also made available to respondent.

ham, Kirby and Hain. The record facts as to the foundation laid as a basis for respondent's motions for production and as to the documents and affidavits will be summarized. Rasmussen had not furnished information about respondent to the F.B.I. (tr. 397, 398, 556-557). He did, on request, furnish information to investigators for the Immigration and Naturalization Service. Two INS reports containing possibly relevant material were submitted for *in camera* examination, one reporting an interview held on September 15, 1952, and the other on March 12, 1954 (Board Exhibit 6). Affidavits of the interviewing-investigators which were submitted showed that no verbatim records of the interviews were made by any method; that notes taken by the investigators were destroyed after serving as a basis for the investigators' reports; that neither the notes nor the investigators' reports made from the notes were ever shown to Rasmussen; and, that the reports were a summary or memorandum account of the interviews.

The entire foundation elicited from the witness Dirdak was that after being expelled, in 1949, from respondent union he was contacted by the F.B.I. and discussed the union with them (tr. 2319-2322). He talked with F.B.I. agents again prior to an occasion when he testified before a Federal Grand Jury in Denver, Colorado (tr. 2321). Parts of a relatively comprehensive F.B.I. report, dated September 10, 1956, on the Mine-Mill union were submitted for *in camera* examination and there was also submitted an affidavit of the agent who had interviewed Dirdak, on July 30 and 31, 1956, the agent's account of which constituted the substance of the submitted parts of the comprehensive report (see Board Exhibit 2). According to the affidavit, longhand notes comprised of key words and phrases were taken during the interview which condensed and summarized the statements made by Dirdak. The report was dictated on September 6, 1956, from the notes and memory, and was the agent's attempt to condense, abridge, and summarize, in the agent's own words, with

some exact words of Dirdak in quotation marks, the results of the interview. Dirdak was not present at the time of the dictation of the report and neither the notes nor the report was shown or read to Dirdak for approval or certification of correctness. The notes taken were destroyed after dictation.

The witness Bush talked with agents of the F.B.I. on a number of occasions after he left the Mine-Mill union (tr. 2654-2656). He never gave testimony before a Federal Grand Jury and his first appearance as a witness in cases involving the union or Communists was in this proceeding. Nowhere in the witness' testimony is there any indication that he ever made a written statement to the F.B.I. A total of nine reports prepared by F.B.I. agents who had interviewed Bush were submitted for *in camera* examination as were the affidavits of two different F.B.I. agents who had individually conducted one or more of these interviews. No useful purpose would be served in summarizing the affidavits. They show that notes were taken during the interviews but were destroyed after the agents' reports were typed or dictated. They contain facts sufficient to show that the reports are not "statements" of the witness.

In the cases of Everingham, Kirby and Hain, the cross-examination consisted only of showing that the witnesses had talked to agents of the F.B.I. There was no showing that any of these witnesses had made written statements or signed or approved any notes or reports of the interviews.² This is corroborated by the affidavits of the inter-

² For instance, the following was the pertinent cross-examination of the witness Everingham (tr. 2766-2767):

Q. Did you ever make a written report or sign any statement for the F.B.I.?

A. No.

Q. Did the F.B.I. ever prepare a statement for you to sign?

A. No.

Q. Did the F.B.I. ever show you a written statement based on what you had told the agent?

A. No.

viewing agents which contain sufficient facts to show that the F.B.I. reports were not "statements" of the witnesses (see Board Exhibits 1, 3, and 4).

As stated, *supra*, the substance of respondent's instant motion as it concerns the interview-reports is that it was incorrect to receive and consider the affidavits, and that the agents themselves should be called (see tr. 8933, 8950). Particularly in the light of the record as summarized above, the Hearing-Member does not agree with the contention argued by counsel for respondent that "it was impossible to tell simply from the face of the documents and affidavits whether the documents constituted statements or not" (tr. 8933-8934). It is to be noted that only oral statements of the witnesses are here involved.³ The affidavits are clear that no effort was made by the interviewing agents to include the whole oral statement or substantially verbatim recitals of the witnesses' words in the notes that were taken or in the reports that were prepared later, in some instances quite a number of days after the interviews had taken place.

The Hearing-Member does not read the Supreme Court decision in the *Campbell* case, *supra*, as barring in all situations the use of an affidavit as extrinsic evidence. The Court in *Campbell* cited (slip op., p. 7) with approval an earlier statement made in *Palermo v. United States*, 360 U.S. 343, where the Court said (at page 355): "It is a function of the trial judge to decide, *in light of the circumstances of each case*, what, if any, evidence extrinsic to the

³ There is no indication from the record and respondent makes no showing that any written statements were made and signed or approved by any of these witnesses. Neither is there any indication from the examination of the witnesses that any of them read or approved or even saw the notes taken by the interviewing agents, and the affidavits affirmatively show that they did not. This is different from the situation in the *Campbell* case, *supra*, where there was strong indication that the witness' statement was read back to him and possibly that he signed it, and the interview-report there involved might have been that statement.

statement itself may or must be offered to prove the nature of the statement." (Italics added.) Here, the interviews were conducted a long time before the hearing, at locations many hundreds of miles away, by agents who were not present at the hearing at any time. No testimony was elicited from the witnesses which tended to show the existence of any recordings or accounts of the interviews other than the documents submitted. The face of the documents themselves showed them to be memorandum reports made by agents and prepared varying lengths of time after the interviews.

The sole question upon examination of the documents *in camera* was whether, notwithstanding the nature of the documents as appeared from their faces, they might still conceivably have been substantially verbatim recitals of the witnesses' own words. The Hearing-Member adheres to the opinion that the receipt of the affidavits and their consideration, after hearing respondent on the sufficiency, was a permissible and reasonable procedure under all the circumstances.⁴

Part "2." of respondent's instant motion is as follows:

"In the case of documents containing relevant information obtained by attorneys for the government from petitioner's witnesses, the Hearing Examiner refused to require petitioner to produce the documents for determination, with or without hearing, as to whether such documents were 'statements.'"

Contrary to the implications, if not the language of this part of respondent's motion, there has been no refusal to order the production of such documents. In fact, the record

⁴ The affidavits also showed that the notes taken by the agents during the interviews were not themselves "statements" of the witnesses. There is no basis, and none has been urged, for doubting that the notes were destroyed, in accordance with the practice at the time, after the agents' reports had been typed or dictated.

is clear that the order to produce and the procedure established, including the submission of questionable documents for *in camera* determination, were understood to cover not only F.B.I. reports but also any documents containing information given by a witness to a government attorney which was relevant to the witness' testimony (see, *e.g.*, tr. 4576, 4578, 4581).⁵

Respondent's quarrel, as indicated from oral argument, seems to be with the fact that no such documents were either produced directly to him or submitted to the Hearing-Member for *in camera* examination. In other words, respondent argues that since some of the witnesses were interviewed at one time or another by government attorneys, there must be some relevant "statements" to be produced. But the facts do not seem to justify respondent's suspicion.

Respondent did not make a motion for the production of prior statements with respect to six of petitioner's witnesses (Davidson, Henderson, McLean, Moriority, C. Wilson and H. Wilson) so they cannot be involved in the question of statements resulting from attorney interviews.⁶ With regard to seven other witnesses (Bush, Dirdak, Hain, Kent, Kirby, Moralez and Rasmussen) there was no foundation laid as to possible interviews with attorneys—the witnesses were not even asked if they had been interviewed at any time by any government attorneys let alone whether they had discussed with such attorneys any subject matters about which they testified here. Thus there is no basis

⁵ Part of the colloquy on the subject included discussion of material that was purely the work-product of an attorney in preparation for a case. But the record shows understanding that the standards for production were solely those of section 3500 and not the reasons for or circumstances under which a statement was taken.

⁶ Neither, of course, are six other witnesses (Eckert, Horie, Knott, Locke, Ortiz and Petersen) whose entire testimony was stricken and does not constitute any part of petitioner's case in chief.

for questioning the absence of relevant "statements" obtained from these witnesses by government attorneys.⁷

Even with respect to the remaining six witnesses (Duran, Everingham, Fikes, Gardner, Hartel and Paumi) none was asked on cross-examination whether notes were taken by the interviewing government attorneys, whether the witness had read or signed or approved any document, and so on. The only question, if any, then is whether the witnesses made oral statements to government attorneys on subject matters about which they testified in this proceeding that were recorded contemporaneously and substantially verbatim by the attorneys.

At oral argument on the instant motion, counsel for respondent referred specifically only to the witnesses Gardner and Rasmussen. The record as to Gardener is that prior to his testimony in this proceeding he had testified, *inter alia*, before various Federal Grand Juries and in certain Federal criminal trials; that before giving testimony on those occasions he talked with government attorneys about the testimony he was to give; and, that during the course of the interviews with the government attorneys he had occasion to talk about some of the things that he testified to in this proceeding (see tr. 4948-4960; 4974-4983). Having developed this, counsel for respondent moved that petitioner produce any statements, as defined in section 3500, dealing with the subject matter of his testimony here that were made to government attorneys. Counsel for petitioner then stated:

"... the Petitioner has already produced all of the statements in his possession within the purview of Section 3500, of statements that have been made by this witness. * * * ... there is nothing else in the files of the Government, and I assure the Board that

⁷ In any event, the considerations set forth below are applicable to these seven witnesses.

the files of the Government have been searched, that in any way comes within Section 3500.)" (Tr. 4992.)

A similar motion was made when the witness Fikes was on the stand and counsel for petitioner again represented: "There is no such material in the hands of the government." (Tr. 5110.)

Concerning the witness Rasmussen, although he was not asked on cross-examination whether he had been interviewed by government attorneys (*supra*) counsel for petitioner advised that he and co-counsel had interviewed the witness on matters about which the witness testified, that considerably later a "witness-sheet" was prepared from various sources, including counsel's memory of some parts of the interview.⁸ It appears to be clear from the record that under the circumstances, particularly the fact that the witness-sheet was prepared from memory at a time much later than the interview, there is no prior "statement" of Rasmussen that was taken by the government attorneys (see, *e.g.*, tr. 4371, 4377-4383, 4386, 4577, 8939, 8946-8947, 8958-8960).

The record shows that in voluntarily relating the situation as to Rasmussen, counsel for petitioner was giving an illustration and counsel stated to the effect that he knew of no relevant documents in petitioner's possession reflecting interviews with any of the witnesses by government attorneys (see tr. 4576-4577). Since there had been a quiet lengthy recess before the hearing when petitioner made his representations, counsel for petitioner was given the opportunity to refresh his memory. Surely petitioner would have modified his statement if not accurate after having reviewed the government files.

⁸ Counsel who later prepared the "witness-sheet" did not take notes during the interview. His co-counsel may have made some notes at the time but, "Our files have been searched and if there ever were such notes we don't have them at the present time." (Tr. 4381.)

Obviously petitioner must make an initial determination whether any documents exist that contain relevant material furnished by the witnesses. Then, as stated by counsel for respondent, "if Petitioner was doubtful . . . [on whether relevant documents met the standards of section 3500] they should be submitted to you [the Hearing-Member] for determination as to whether they were statements or not." (Tr. 8934.) In view of the clear understanding that statements, as defined in section 3500, made by the witnesses to government attorneys were included in the material to be produced under the Hearing-Member's order, and in view of the record as summarized above, there is no reason to believe that petitioner has not complied with the order to produce.

Accordingly, that part of respondent's motion addressed to the absence of any relevant documents reflecting attorney interviews will be denied.

Upon consideration, and it having been determined that respondent's motion is without merit, it is

ORDERED, that respondent's motion, filed February 2, 1961, dealing with the receipt of affidavits as extrinsic evidence and with documents reflecting interviews by government attorneys, should be and the same is hereby denied.

FRANCIS A. CHERRY
Francis A. Cherry
Hearing-Member

February 15, 1961
Washington, D. C.

Excerpts from Transcript of Testimony

750

SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 116-56

HERBERT BROWNELL, JR.

Attorney General of the United States, *Petitioner*

v.

INTERNATIONAL UNION OF MINE, MILL AND
SMELTER WORKERS, *Respondent*

Room 111 Lafayette Building

811 Vermont Avenue, N. W.

Washington, D. C.

Thursday, March 21, 1957

The hearing in the above-entitled matter reconvened,
pusuant to recess, at 10:00 a.m.

Before:

FRANCIS ADAMS CHERRY, Board Member.

Appearances:

• • • • •

752

Homer T. Wilson

was called as a witness for Petitioner and, having been
first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hefin:

Q. Will you state your full name for the record, please.

A. Homer T. Wilson.

Q. Where are you residing at the present time, Mr.
Wilson? A. Strawberry Plains, Tennessee.

• • • • •

771

Q. Did you become acquainted with a person by
the name of Chase Powers? A. Yes, sir. Mr.

Powers was elected a board member at the same election I was and took office at the same time I did.

Q. And which district did he represent as board member? A. He represented a western district, District 7.

Q. And that includes what states? A. Oh, Idaho, California, and I don't know how many more out there.

Q. That northwest area? A. Washington State. I know Powers had jurisdiction over one local we had in Alaska.

Q. Now, after you became acquainted with Powers, did you have any discussions with him in regard to Communist Party activity in the union? A. Yes, sir. Powers said he was a party member and he discussed the party's activities within the International Union very often.

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1399

Carmen Phyllis Wilson

called as a witness for Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Sar:

Q. State your full name. A. Carmen Phyllis Wilson.

• • • • •

1400 Q. Where do you live Mrs. Wilson? A. Denver, Colorado.

• • • • •

Q. When were you first employed by Mine Mill? A. Approximately November of 1942.

• • • • •

1403 Q. Did you have a conversation with Alan McNeil.

A. Yes. I had brief conversation with Alan McNeil.

Q. Do you recall the substance of that conversation with Mr. McNeil? A. Yes. The substance of the conversation was first of all whether or not I was qualified as a secretary, to hold a secretarial position. And I explained to

him that I was. And he asked me if I considered myself a left-winger or a right-winger of the union movement, and I told him that I considered myself a left-winger of that movement.

He asked me at that time if I had ever considered joining the Communist Party and I told him no, that I had not; that I considered myself much too young. I was 19 at the time.

Mr. McNeil then said to me that generally speaking I was too young, but that in this particular instance it would be up to the party to decide that and asked me whether or not I would be willing to join the Communist Party.

I told him that I thought I would be but that I would like a little time to think it over.

• • • • •

Q. And after finishing the conversation with Mr. McNeil what if any thing did you do? A. I went into the next room and spoke to Mr. Harold Sanderson.

Q. Would you tell us the substance of the conversation that you had with Mr. Sanderson? If you recall. A. Well, I told Mr. Sanderson about the conversation with Mr. McNeil and told him that I was somewhat surprised that the question of the party had arisen, and wondered whether or not it was a prerequisite of the job. And he told me that he thought it would be a good idea if I did join the party.

• • • • •

1407 Q. On the days immediately following that first day did you have conversations with any of the people whom you have mentioned? A. Well, about the next day Mr. Hill asked me to have coffee with him and took me next door to the coffee shop and—

Q. Did you have a conversation with him there? A. Yes. He approached me on the subject of joining the party and asked whether or not I had made up my mind to join the party. And I asked him, as I

1408

had Mr. Sanderson, whether or not that was a prerequisite of the job. And Mr. Hill informed me that it was, and suggested that if I had any questions I go with him to meet a woman by the name of Dorothy Baskin.

Q. Did he tell you who Dorothy Baskin was? A. Yes, he explained to me she was the secretary of the downtown office of the Communist Party in Denver.

* * * * *

1410 Q. Did you later attend any meetings of this branch of the Communist Party to which you stated that Miss Baskin had just assigned you? Yes, I did.

Q. Do you recall approximately when the first meeting of that branch of the party was held? A. Oh, approximately a week later.

Q. Do you recall where it was held? A. Yes. I believe it was held at Mr. Emerson's house. It was held at either Mr. Emerson's house or Mr. Ray Lee's house.

Q. Would you give us the names of all of the people that you can recall who were present at that meeting? A. Yes.

Mr. Forrest Emerson, Mr. Harold Sanderson, Mr. Graham Dolan, Mrs. Eunice Dolan, Mr. Matt Hill, Mr. Ray Lee, Mr. Chuck Binna, Mr. Ed Bouche, and myself.

* * * * *

2904

George T. Kirby

was called as a witness on behalf of the Attorney General, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Broome:

Q. Will you state your full name, please? A. George T. Kirby.

Q. And where do you live, Mr. Kirby? A. I live at 3529 South 5450 West, in Salt Lake City.

* * * * *

2908 Q. Now, you said you attended a meeting in Denver in 1948. I believe you said prior to the time the convention met in 1948. A. Yes, sir.

• • • • •
2909 Q. All right. Do you recall what sort of meeting it was? A. Yes, sir.

Q. And what was it? A. They had called the conference in Denver to make a request upon the International Board to comply with the signing of Taft-Hartley affidavits.

• • • • •
2910 Q. Now, while you were at this conference in Denver did you have occasion to attend a meeting or a conference, and I am not speaking about the large conference where this was considered at which John Clark was present? A. Yes, sir.

Q. Do you remember who else may have been present? A. There was Wesley Madill, Kenneth Eckert, Vern Reece, and several other people, and I myself was there.

Q. And was Clark present? A. John Clark. This was a caucus we had with Jack Clark.

Q. All right. Now, will you tell us, please, sir, as nearly as you can recall it in substance what transpired at that caucus? A. Well, it seemed that Wesley Madill and Kenneth Eckert had previously before the conference met with John Clark and asked him what his position was on the signing of the Taft Hartley affidavits, and he said that for the safety and the unity in the organization and to hold it together, that he felt he would have to recommend signing the affidavits. So we caucused with him and asked him if his position was the same and he said his position
2911 remained the same and that he would recommend the signing of the affidavits to the International.

Q. Now, do you know a person by the name of Jesse Van Camp? A. Yes, sir, he was an International Representative.

Q. During the time that you were in Denver attending this large conference did you have occasion to hear a conversation between Van Camp and others? A. Yes, sir.

Q. Where was this conversation, please, sir? A. It was after the convention one evening that Vern Weinert and myself were doing the town. We went into a place called the Pink Elephant, and we sat in a booth and just behind us was Van Camp, Mr. Pezzati and some other people were there, and I overheard Van Camp say, "Listen, fellows, John Clark is weakening, and we have got to give him a shot in the arm. We have got to do it soon." * * *

* * *

2914 Q. * * *

Now, tell me, if you can recall, who the persons were that were opposed to complying with the Taft-Hartley Act? A. The people who spoke in opposition to compliance was Jesse Van Camp, Pezzati, Clint Jenks, Irving Dichter, and there were several others; Maurice Travis spoke in opposition for one. I remember that, but all of the others I don't know who they were.

Q. Mr. Kirby, what was the outcome of that conference there? What was decided? A. It was decided non-compliance.

* * *

2934 Q. Mr. Kirby, do you know an Al Skinner? A. Yes, sir.

Q. How long have you known Mr. Skinner? A. Well, off and on since about 1949, when he first came to Utah as an organizer.

Q. After he came to the Utah area, did he become
2935 a member, to your knowledge, of any local? A. Yes, sir, he became a member of Local 392.

Q. And did he attend meetings of that local? A. Yes, sir.

Q. Did you ever have a conversation with Mr. Skinner on the subject of Communism? A. Yes, sir. I had many discussions and arguments with Al Skinner.

Q. Do you recall any specific conversations you had with Skinner on the subject of Communism? A. Yes, sir.

Q. Do you remember where it took place? A. It was at the union hall in Magna.

Q. Who was present? A. Just Al Skinner and myself.

Q. Do you remember approximately what time it may have been? A. The time of day or time of year?

Q. I mean the time of the year. A. It was in 1949, about the time that the Hiss trial and some of these other deals were coming in. So I was harping to him about the Communists in the union and the various Communist activities. We talked at some length and he turned to me and he said, "OK, I'm a Communist, but you can't prove it outside of this room."

Q. What response did you make to that, Mr. 2936 Kirby? A. I just told him that I don't know whether or not I could prove it, but, by hell, I would certainly try.

• • • • •

2962 Mr. Broome: May this document be marked as Attorney General's Exhibit No. 55 for identification.

(Whereupon, Attorney General's Exhibit 55 was marked for identification.)

By Mr. Broome:

Q. Mr. Kirby, I hand you a document marked for identification as Attorney General's Exhibit No. 55. Will you please examine it and state what it is, please, sir, if you know? A. Yes, I know what it is.

Q. Will you state what it is, please, sir? A. It is a copy of a confidential memo that was received from International Union of Mine, Mill and Smelter Workers to its members and representatives.

2963 Q. Did you ever have in your possession the original of that document? A. Yes, sir.

Q. Will you tell us, please, sir, when you had the original in your possession and where you got it?

• • • • •

The Witness: I had the original in my possession about June of 1948, and I picked it up off of a desk of one of the international representatives in the Salt Lake office.

By Mr. Broome:

Q. What international office was that? A. That was Skinner's office.

Q. When you had the original in your possession, did it have any signatures on it? A. Yes.

2964 Q. What signatures? A. It had John Clark and Maurice Travis.

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EXCERPTS FROM EXHIBITS

Exhibit AG 55

INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS

May 25, 1948

Dear Sir and Brother: • • •

3) Fight the Marshall Plan, [sic] the Truman Doctrine and the whole war program of the bi-partisan Congressional bloc, particularly Selection Service and UMT.

Recent developments indicate that it is on the question of foreign policy that the war profiteers and big business interests, including the Truman administration, are being most ignominiously exposed. Billions of dollars poured into Greece and China have simply been a waste of American resources. The common people the world over are beginning to recognize that the United States is pursuing the same kind of policy which stirred the wrath of everyone against fascism. The attempted indecarination [sic] of the American people with the idea that the Marshall Plan is a "peace" plan fell flat on its face with

Truman's call for Universal Military Training and the draft. The American people are opposed to war and all that goes with it. Surely, this is an issue that we can fight openly and fearlessly. This is an issue that we can use to boot the pants off Reuther and Green. Let's not be afraid of it. * * *

Exhibit AG 36

OFFICIAL PROCEEDINGS

of the

46TH CONVENTION

of the

**INTERNATIONAL UNION OF MINE, MILL
AND SMELTER WORKERS**

Held in Denver, Colorado

At the Albany Hotel

September 11 to 15 Inclusive

1950

Report of President John Clark

pp. 145-6

Expulsion from CIO

We were well aware, when we met in convention a year ago, that the CIO was in imminent danger of being divided. We resolved to do everything in our power short of surrendering our autonomy to forestall the further splitting of labor's ranks.

Our efforts were unsuccessful. We have had the trying experience of living through the deliberate destruction of a labor unity toward which we had contributed much.

Like a watcher on shore who can do no more than shout a warning, we saw the CIO leadership shoot the rapids of

red-baiting, smearing, phony "trials" and expulsions, then plunge into the abyss of all-out raiding and wrecking.

As ordered by our Chicago convention, your officers arranged to place this union in good standing with CIO so that we could participate in the CIO convention of last November. Your four International officers and five other members elected by our convention attended the CIO convention.

LET ME QUOTE from the report of the five rank-and-filers:

"The difference between the two conventions (Mine-Mill and CIO) is the difference between night and day.

"The following unbelievable things happened (at the CIO convention): No minority report was permitted to committees. The chairman, on numerous occasions, refused to recognize minority speakers. He refused to allow debate on two important constitutional amendments. . . .

"Among the insults hurled at us as members of the minority were 'yellow,' 'traitor,' 'dirty-bellied scum' . . .

"We were shocked at the action of Murray in attacking our Vice-President for trying to get the floor . . .

"The most shocking thing of all was the challenge of the right of our union to choose its representative on the CIO Executive Board . . .

"Three constitutional amendments were adopted which change the character of the CIO from a democratic federation to an organization cooperating in the suppression of ideas that Wall Street does not like. The amendments are very much like section 9-H of the Taft-Hartley act . . .

"Out of the five days, less than ten minutes were devoted to the subject of wages . . .

"The pleasure of big business was expressed in the daily press . . .

"We recall that our union was expelled from the AFL by an undemocratic procedure that wa [sic] mild compared to that adopted by the CIO convention this week."

Nature of the trial

Under terms of the constitutional amendments described by our delegates as "very much like section 9-H of the Taft-Hartley act," our union was then framed, tried and expelled.

Nature of the trial was described by the rebuttal brief which we presented to the trial committee:

"Underlying the whole approach of the prosecution, in its presentation of its 'case', is an implicit contempt for the democratic processes by which organizations such as Mine-Mill are governed. Union policies, in the prosecution's view, are determined by a few top leaders in 'secret' gathering and then merely communicated to the members . . .

"The charge alleges that 'the policies and activities of the Mine, Mill and Smelter Workers are consistently directed toward the achievement of the program and purposes of the Communist party rather than the objectives and policies set forth in the constitution of the CIO.'

"The weakness of his case forces the prosecutor, almost at the outset of the hearing, into an extremely significant admission: 'My charge, then is not that this union has differed from CIO policy.'

"The prosecutor—the man who brings the 'charge'—now withdraws it.

"The complainant enters the court room, announces that he is not proceeding on his complaint, but would still like to throw some mud at the defendants. An unbiased committ [sic] would have dismissed the entire proceeding at that point, and rebuked the complainant . . ."

Only One Issue

On February 15, the expulsion took place. Reporting this to the membership, the Mine-Mill International officers said:

“At the board meeting which expelled us, the CIO leaders made it clear that the only issue was whether we would agree to conform to any directive of CIO leadership, regardless of our own members’ decisions and needs.”

Answering the question “Where do we go from here?” the officers made the following points:

1. We shall continue on the course charted by our 1949 convention—militant, democratic unionism;

2. We seek cooperation and joint action by any and all other unions or segments of unions that share our immediate goals;

3. The unswerving loyalty of every member and officer will guarantee the protection of the bargaining rights of our local unions and the protection of the welfare of our members.

4. We shall keep the flame of militant, rank-and-file unionism burning. We shall continue to fight for the welfare of our members, and at the same time brush off the new wave of raiding that will come in the wake of the expulsions.

Ten other unions with total membership of about a million have been expelled by CIO. This eaves [sic] the once-great CIO with membership of less than 3 million. This is the payoff for its policy of “raid, rule and ruin” instead of organize and fight.

Exhibit AG 58

OFFICIAL PROCEEDINGS

of the

48TH CONVENTION

of the

INTERNATIONAL UNION OF MINE, MILL
AND SMELTER WORKERS

Union Label

Held in New York, N.Y.

At the Hotel Governor Clinton

-:-

September 8 to 12 Inclusive
1952

[3] MONDAY MORNING SESSION

September 8, 1952

• • • • •

[5] PRESIDENT JOHN CLARK: • • •

[7] At this time I will call on Brother Secretary-Treasurer Maurice Travis to read the Convention Call. Brother Travis. (Applause)

SECRETARY-TREASURER MAURICE TRAVIS:

(Call to 48th Convention)

• • • • •

[8] The workers of America cry for peace, and for the trade which will bolster peaceful production. The answer they get is war AND [9] depression. The answer they get is political oppression and denial of civil liberties—so that their cries will be quieted, so that their resistance will be weakened.

Harry T. Moore was murdered by southern Klansmen as a "lesson" to every Negro who fights against Jim Crow and poverty. Storm troopers in Cicero, Illinois employed the gun and club to drive Negroes back into the ghetto. Our Mexican-American sisters and brothers in Bayard, New Mexico were beaten and jailed, to manifest Anglo-employer invincibility.

Witch hunts have become the standard device of persecution against unions. The Taft-Hartley Law, the McCarran Law, the Smith Act, make "freedom of speech" an ironic phrase, marking virtual repeal of the Bill of Rights. Peace, liberty, and the pursuit of happiness are crimes, punishable by jail. Thought control bids fair to be the law of the land.

* * * * *

Fraternally yours,

(Signed) M. E. TRAVIS, Secretary-Treasurer

* * * * *

[10] PRESIDENT JOHN CLARK: * * *

[11] The Chair would now like to name the Committees which will be active during this Convention on the business of the Convention.

Rules and Order: C. D. Smothermon, Board Member, Chairman; * * *

Resolutions: Alton Lawrence, Board Member, Chairman; * * *

Committee on Credentials: Brother Travis, International Secretary-Treasurer, Chairman; * * *

Committee on Wage and Contract Policy: International Vice-President Orville Larson, Chairman; * * *

Committee on Minority and Civil Rights: Raymond Dennis, Board Member, Chairman; * * *

Committee on Legislative and Political Action: Charles Wilson, Board Member, Chairman; * * *

Committee on Organization: William Mason, Board Member, Chairman; * * *

Committee on Constitution: Chase Powers, Board Member, Chairman; * * *

[33] INTERNATIONAL EXECUTIVE BOARD

John Clark, President

Charles H. Wilson, Vice-President

Orville Larson, Vice-President

M. E. Travis, Secretary-Treasurer

William Mason, Board Member, District 1

C. D. Smothermon, Board Member, District 2

Raymond Dennis, Board Member, District 3

Alton Lawrence, Board Member, District 5

Albert Pezzati, Board Member, District 6

Chase Powers, Board Member, District 7

[66] WEDNESDAY AFTERNOON SESSION

September 10, 1952

* * * * *

PRESIDENT CLARK: Thank you, Earl. Sister and Brother Delegates and visting friends: This afternoon we are going to have another pleasant [67] surprise. We have with us this afternoon a distinguished actress both on the stage and screen. She has played in many movies; one of them gave her an invitation to appear at the White House; "Black Fury" and many others. She has a son, at the present time of draft age. She has always been in the forefront fighting for justice, as you and I, fighting for peace. However, I think she rates far more credit than possibly we do.

To me these days, with all that I see pointed at those people who fight for peace, to me these days it is nothing

less than heroic. She, like your leaders in this International Union, like many other friends of labor, like many other friends of the people in these times, she today has been the subject of this diabolical hysteria and witch-hunt. That is why I think it more than appropriate that this fine woman, this fine actress is with us this afternoon. It gives me more than pleasure, it gives me a lot of pride to present to this great Convention Karen Morley a great friend of organized labor and a great friend of the common people.

(Applause and the delegates arose.)

MISS KAREN MORLEY: * * *

[70] And then came the Korean war and corporate profits in this country stand today at 43 billion dollars a year. I say before taxes, because did you ever hear somebody say what your wages were after taxes? Now, you can say of the big corporations in this country that they don't really need a war; they were doing very well without one, but it's nicer to be a billionaire than a millionaire! (Applause)

So for them the Korean war has been quite a bargain. I don't [71] think it has been quite such a bargain for us. Now, if you don't want the Korean war, you say, well, could this money be spent on canals and dams and schools and houses and wages and medical expenses and hospitals? You and I know very well that it could be. I don't think there is a person in this room who doubts that the money going for armaments could be spent to enrich the people of this country and there is not one of you that won't say to me, "But they won't do it." And I say, "Who won't do it?" And you will say, "The government won't do it." Why won't the government do it? Could it be because it is their government; not our government? It seems to me this is the obvious answer. So then what? Can we change it? Can we do something about it? I think so. I really believe so. I think that if 3,000 miners go to Washington and

demand a change, they might be listened to a little; but if 30,000 miners go to Washington and tell them what they want, they'll be listened to more, and if 30,000 isn't enough, haven't you got some friends? Are you the only trade union in the country? How about 3,000,000 workers going to Washington? It's nonsense that we couldn't do anything. Of course, we can do something. It's just this awful inertia, this paralysis that has set in everywhere. If the Congress won't do anything about it, if the President won't do anything about it, we can get another Congress and we can get another President. (Applause) Do you really and truly believe that the American people are incapable of figuring out a way to use the fabulous, fantastic wealth of this country for their own good? If you think so, you should have your head examined. However, I believe with the Bible that man does not live by pork chops alone. I would like us to look into this Korea war situation a little beyond the pork chop issue. Suppose we did get higher wages. Suppose we got a bigger cut of this tremendous pie, would it then be all right? Could we close our eyes to what's going on in Korea? I was in a market in Brooklyn the other day. A very sweet little child got its hand caught in the door and began to scream. There was not a person in that place that didn't drop everything, including their money, to see what could they do for that little one. Now, if I were to have a child here today, and if I were to begin to pour gasoline over it, I don't think there isn't one of you that wouldn't break my arm. Do you know how many Korean children have died from jellied gasoline dropped by Americans? Nobody knows how many. The South Korean delegate to the U.N. claimed two years ago that the Korean civilian casualties alone had already hit three million. The last figure I heard was four and one-half million civilians dead. That's more than decimating the country; that's what the Nazis did in Poland. You know it makes you kind of sick. I cannot believe that this country, if it could see what's happening, would let it go

on another day. I know of a woman in California who had a son in the Korean war. He is now in an institution for the insane. In his madness he lives over and over a scene. He was opposed by a Korean child of nine with a hand grenade and he shot the child and then he went and picked him up and he carried him in his arms until he died, and this scene he plays over and over in his madness, trying to bring the child back to life. I only tell you this not just to make you feel bad, but because I want you to realize for one thing how many children there are in the world that have lived through war, how many in Europe, in France, in Italy, in Russia, in Poland, how many in China, how many in Japan, all of the children that remember war, how many they are, and these are the children who are now growing up to be of military age. I want you to consider very seriously when we talk so glibly about going to war, about going into a crusade against communism, I want you to consider very carefully the vengeance of the children who know what the crusade against communism meant to them. If you think that the children of France who are now 20, 21, 22, who seven years ago were 13, 12, and 11, if you think that they are going to fight for American corporate profits you're very much mistaken. I think they [72] not only won't fight for them, I don't think you dare arm them. And that goes for three generations of widows in Italy. I don't think we dare arm them to fight against the Soviet Union. I don't think they would fight against the Soviet Union. You know why we can't have a war? Because I'll be dead. I live in New York. I know we have 132 bombs and they have only 113. If I die from one bomb, I don't care who has how many bombs. I want to speak about the children of Asia. I wonder if you think they are going to be our allies in such a world war? I don't think so. The people of Asia and of Africa no longer blow at you with little poisoned arrows through a blowgun. Today they meet you was massed artillery and radar and ack-ack and supersonic planes. I don't think we can take on the world.

Now, what do I want from you? Not very much. I just want you to stop this whole policy, I just want you to turn America back to a democratic course, I just want you to turn the economy back to an economy for the people. That is not asking too much, is it? Because there is nobody else to do it. The intellectuals can't do it, the middle class can't do it. We can't let the people all over the world do it for us. They may do it for themselves but they can't do it for us. So whose left? Only the American workers, nobody else. You have to do it. And how are you going to do it? It's not hard. You're going to do it by being men, men in the real sense of the word, women in the sense of the women who womened the picket line at Bayard. You're going to do it by being people like the leadership that has just been picked on, these four. You're going to defend them because you're men, because you live by a principle and because you might one day have to die by it, and you will defend these four I believe to the last ounce of your strength, and when you do you will defend all of us, this country, and me, and all of the children all over the world.

. . . (Prolonged applause and delegates arose) . . .

President Clark: Thank you very much, Karen Morley. It is pretty hard for me to speak the appreciation of this convention. I know this much: that her thinking on this horrible situation before the people of the world is the thinking of all of us. I listened very carefully to the talk, and it takes a brave woman in these days to make those utterances. And yes, it takes a brave man.

I would like to say to our distinguished visitor that this organization, not only its leaders but many of its rank and file, have spoken in the same tone. Their desires are her desires; her hope that some day, somehow, this war business is going to cease; that the leaders of all these nations will ultimately get round the table, check their guns in the ante-room and talk over the situation like human beings. I know

full well that some of the statements that I have made on these platforms are going to be brought into that McCarran Committee by the dirty, rotten, lousy stoolpigeons that Karen spoke about. (Applause) I just want to say, Karen, the only way that I can show appreciation of this delegation is by asking them to rise and give you the feeling that they have for the talk you have made.

. . . (Applause and delegates arose) . . .

• • • • •
Exhibit AG 59

OFFICIAL PROCEEDINGS

OF THE

49TH CONVENTION

OF THE

**INTERNATIONAL UNION OF MINE
 MILL AND SMELTER WORKERS**

**HELD IN ST. LOUIS MISSOURI
 AT THE HOTEL DE SOTO**

SEPTEMBER 14 to 19 INCLUSIVE

1953

**[3] MONDAY MORNING SESSION
 September 14, 1953**

• • • • •
**[9] SECRETARY-TREASURER MAURICE E. TRAVIS:
 To ALL AFFILIATED LOCALS**

• • • • •
**[10] Delegates to this Forty-Ninth Convention will give this
 answer to the McCarrans and the Goldwaters. There will
 be a lesson in it for wage-cutting employers.**

**In this year of 1953 and in the years ahead, Mine-Mill
 members will be no less tried than the stalwarts of other**

years. Our enemies, the monopoly employers, not only challenge us across the bargaining table, they also dominate the machinery of government. In the few months of their unbridled control, no section of the working people has been untouched by their arrogance. Anti-labor laws threaten every worker; the small farmers are told to shift for themselves against the giant food and packing interests; lynch law reigns for the Negro people; aliens, particularly Mexican-American workers, are the victims of the racist McCarran immigration law.

The public domain—tidelands oil, grazing lands, forests, public power, natural resources which belong to the people—are being unashamedly appropriated for the rich in the most incredible “steal” in American history.

Vaunted “free enterprise” is less and less able to bridge the chasm between high production and low purchasing power. Taxes and present living costs have made up a nation of debtors. The economy itself is in serious trouble.

But the economy can be saved and democracy can be saved. There is a strong wind blowing from the people—the wind of unity against reaction. Our members understand unity—the strength of workers bound by the same purpose. Unity of purpose which embraces the mine, the mill and the factory worker, the small farmer, the doctor, the lawyer and the corner grocer cannot be thwarted. That unity of purpose has already achieved at least a troubled peace in Korea in the face of the most unrelenting big-business drive toward war.

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[11] President Clark: At this time the Chair will read the names of the Committees members.

RULES AND ORDER

Raymond Dennis Chairman

• • • • •

MINORITY AND CIVIL RIGHTS ..

Chesley Smothermon Chairman

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CREDENTIALS

M. E. Travis Chairman

• • • • •

[12] PRESS AND EDUCATION

Charles Wilson Chairman

• • • • •

LEGISLATIVE AND POLITICAL ACTION

William Mason Chairman

• • • • •

ORGANIZATION

Albert Pezzati Chairman

• • • • •

CONSTITUTION

C. J. Powers Chairman

• • • • •

WAGE AND CONTRACT POLICY

Orville Larson Chairman

• • • • •

[13] RESOLUTIONS

Alton Lawrence Chairman

• • • • •

[116] FRIDAY MORNING SESSION
 September 18, 1953

• • • • • • • •
 [130] Committee Secretary Hales: Resolutions on Political Action.

Resolution No. 87, submitted by Local 18, Kellogg, Idaho.

Whereas: The Northwest Bargaining Council of the IUMM&SW of which Local No. 18 is a member, called on all of the Locals in its area to create or reactivate Political Action Committees; and

Whereas: It also adopted a policy of seeking support of all other peoples' groups on labor legislation, and in turn supporting these same groups in the fight for all progressive legislation; and

Whereas: The carrying out of the various resolutions adopted here necessitates Political Action Committees; and

Whereas: Because of the intense Political drive against labor the need for political action must be taken out of the realm of talk and inaction; and

Whereas: Many workers are becoming alert to the ease with which the companies through their stooges in congress and the various state legislatures, can take away their hard won gains and stymie their efforts toward more gains; and

Whereas: The Taft-Hartley Law, the Smith Act of 1940 and the McCarran Act are just such laws, passed and now used against labor, which caused labor to become more politically conscious; and

Whereas: We are again drawing close to an election year when many of these same company-dominated congressmen and legislators are up for re-election; Therefore, Be It

Resolved: That the International Union and all its Locals set up Political Action Committees as standing committees; and Be It Further

Resolved: That these Committees must be really active; and Be It Further

Resolved: That the delegates here assembled be responsible for the creation or reactivation of the Political Action Committees in the various Locals.

Resolution No. 91, submitted by Local 890, Bayard, N.M.

Whereas, as one of the Mine-Mill Locals that has won some worthwhile results from rank-and-file political action, Local 890 of Bayard, New Mexico, is anxious to see International policy and effort continue along this line; and

Whereas, we have found that PAC organizations, regardless of [131] whether they worked for a candidate, a program or a new law, can show union strength in city, county, state and federal elections; and

Whereas, Local Unions need to find their own candidates or to build labor unity around candidates that come from the ranks of labor;

Therefore, we ask this Convention to reaffirm the necessity for political action on the part of our International Union and affiliated Locals, and to take what steps may be correct in planning for more such activity in the important year ahead.

Resolution No. 93, submitted by Locals 556, 553, 531, 481.

Whereas, Attacks upon labor have been stepped up nationally and in the various states due to big business influence on national and many legislative bodies; and

Whereas, These increasing attacks take the form of repressive state legislation such as the "right to work bills," various proposals in Congress such as the Butler and Gold-

water bills and the like, and proposals for a national sales tax; and

Whereas, The only way to stop such legislation and to repeal anti-labor laws already on the book such as Taft-Hartley and the various "right to work" bills, is by united and effective action in the field of political and legislative action; and

Whereas, Unless there is such unified action by labor, we are in deadly danger of losing all our civil liberties and our rights of free organization; Now, Therefore, Be It

Resolved, That this convention of the IUMM&SW sets forth as one of our key goals this coming year the carrying out of a program which will involve all locals in registration campaigns, in joint efforts with other labor groups in the field of political and legislative action, and in educating our membership in the urgency of such activity.

The Committee on Legislative and Political Action studied the resolutions referred to above and submitted by the locals on political action.

* * * * *

[132] There are special considerations which emphasize the role our union must play in the political arena of the Mountain West. Nowhere in America has the impact of the first eight months of the Eisenhower administration been as strong as in the Rocky Mountain States and the Far West. With the election of Eisenhower, Big Business or "corporate enterprise" launched the Big Steal. Natural resources have become fair gain for Wall Street. Hydro-electric power, public grazing lands, national forests, natural gas and mineral rights are all at stake.

The people in the Mountain West are struggling to break through to defend the natural wealth of the land in which they live and to organize the fight for their future well-being and security. We are part of this struggle. In 1953

there will be no federal elections, but there will be many municipal and state elections. This year we must begin to establish the testing ground for developing strength of the people's organizations by making a fight wherever possible to elect liberal and progressive individuals whether from labor's ranks or from other people's organizations.

• • • • •
 [133] Committee Secretary Hales: This is the last resolution from the Legislative and Political Action Committee.

The Committee on Legislation and Political Action has read the President's report dealing with matters involving legislation. Some of these subjects have been dealt with as specific issues by our committee and separate resolutions have been submitted. Other issues have been referred to other committees for conventions action.

However, this committee is unanimous in calling for the adoption by the Convention of the following matters from the President's report and we urge that the Convention be on record calling for increased legislative activity by our officers and members in the following matters:

1. Murray Premium Price Plan for the non-ferrous metals industry.

[134] 2. Repeal of Taft-Hartley and a return to the principles of the Wagner Act.

3. The defeat of the Butler-Goldwater-Rhodes-McCarran labor legislation philosophy and all measures connected with that philosophy.

4. The passage of our own bills covering health and welfare and silicosis. These are S. 1599 and H.R. 286.

5. Passage of the Lehman Social Security Bill.

6. With some modification, we should support the passage of S. 2585, the Lehman Immigration Bill, to repeal and supplant the McCarran-Walter Act.

7. Passage of legislation for national health insurance.

8. Passage of legislation calling for the extension and increase of unemployment compensation, with provisions to eliminate red-tape waiting periods.

The committee recommends concurrence, Mr. Chairman.

President Clark: Moved by the committee chairman concurrence, seconded by Sister Jenkins, Local 758.

• • • • •
[135] President Clark: All in favor of this resolution say "Aye"; opposition. The motion is carried and so ordered. I think we should give the committee a rousing vote of thanks because I think they did a splendid job. (Applause)

• • • • •

[231] **Appendix I**

Report of President John Clark

• • • • •

[235] **UNITED STATES**

The record of the new administration can be summed up best in the words of Secretary of Defense Charles Wilson that: "What is good for General Motors is good for the country."

Formerly content with off-stage control of political puppets, Big Business has discarded caution completely and now occupies most important government posts. We are in the era of the Millionaire Cabinet. They have replaced the New Deal with the Big Steal.

Tidelands oil was the first big casualty. Public ownership of natural resources was not given even the courtesy of lip service. Atomic [236] energy was even more firmly grasped by private corporations. Power development and the nation's rivers were next on the auction block. Public lands, public minerals, public forests, coal and shale reserves—all of these were made the stakes in one bill after another in Congress. In two hours of debate, the Senate of the

United States passed, almost without opposition, approval for a \$2 billion gift to buy up old worthless German bonds dating back to the Weimar Republic. Who owns the bonds? The bankers of America. The price? Par value at compound interest since 1923.

With the Big Steal came the further emasculation of the Roosevelt New Deal. The Republican "economy" program did not mean that billions no longer would be wasted in the Cold War. It did not mean cuts in government hand-outs to giant corporations. It did not mean tax reductions for workers. It did mean a ruthless slashing of appropriations for services to the American people.

• • • • •
[277] POLITICAL ACTION

• • • • •
[280] Earlier in this report I have examined the record of the Eisenhower administration and its program of giving Big Business the greatest amount of benefit in the shortest possible time and with the least irriation among the people.

The brun of this "do-it-quick" program was directed against the people of the Mountain West. With the exception of the tidelands oil issue, every other measure introduced into Congress affecting land, power, conservation, or mineral rights was directed mainly against the people in this area. The treachery and rapidity of the blows temporarily stunned the people, but we reacted quickly and scored some important advances in terms of organization.

Perhaps the outstanding example is in the Northwest. The people there have been demanding for several years the construction of a [281] high-head dam in Hell's Canyon on the Snake river. This would mean an abundance of low-cost electric power, irrigation, reclamation, new fertilizer sources, and, above all, thousands and thousands of jobs. With Secretary of the Interior McKay directing the cast,

the Eisenhower administration betrayed the people and turned Hell's Canyon over to a Maine corporation, the Idaho Power Company.

• • • • •
[283] LEGISLATION
• • • • •

If I were asked by Dr. Gallup or a member of the Mine, Mill and Smelter Workers what I considered the most important legislative issues facing this union in the months ahead, I would tick them off as follows:

1. Continued support of S 1539, the Murray Premium Price Plan for the non-ferrous metals industry.

2. Repeal of Taft-Hartley and a return to the principles of the Wagner Act.

3. The defeat of the Butler-Goldwater-Rhodes-McCarran labor legislation philosophy and all measures connected with that philosophy.

4. The passage of our own bills covering health and welfare and silicosis. These are S 1599 and H.R. 286.

5. Passage of the Lehman Social Security Bill.

6. With some modification, we should support the passage of S 2585, the Lehman Immigration bill, to repeal and supplant the McCarran-Walter Act.

7. Passage of legislation for national health insurance.

8. Passage of legislation calling for the extension and increase of unemployment compensation, with provisions to eliminate red-tape waiting periods.

9. Repeal of the Smith Act, the McCarran Act and other anti-democratic laws. Passage of civil rights legislation.

[284] 10. Support of all legislation designed to stop racial and minority discrimination, economically, socially, and politically.

11. Support of all measures in behalf of TVA, Hell's Canyon and other public power, public works, housing, highway, hospitals, etc.

12. Support of all legislation designed to expand world trade.

13. Support of all legislation designed to bring about a change to a peaceful economy and full employment.

• • • • •

[355] INTERNATIONAL EXECUTIVE BOARD

John Clark, President

Charles H. Wilson, Vice-President

Orville Larson, Vice-President

M. E. Travis, Secretary-Treasurer

William Mason, Board Member, District 1

C. D. Smothermon, Board Member, District 2

Raymond Dennis, Board Member, District 3

Alton Lawrence, Board Member, District 5

Albert Pezzati, Board Member, District 6

Chase Powers, Board Member, District 7

• • • • •

Exhibit MM 127
OFFICIAL PROCEEDINGS
OF THE
50TH CONVENTION
OF THE

INTERNATIONAL UNION OF MINE
MILL AND SMELTER WORKERS

HELD IN SPOKANE, WASHINGTON
AT THE HOTEL DAVENPORT

MARCH 14 to 19 INCLUSIVE

1955

[3] MONDAY MORNING SESSION
March 14, 1955

• • • • •
[5] Secretary-Treasure Pezzati: Thank you, brothers.
This Call which was prepared by Brother Travis and sent
out some months ago, is in your kit.

• • • • •
[6] Although a frenzy of hysteria in 1954 resulted in pas-
sage of the Brownell-Butler law and unprecedented attacks
on the Bill of Rights and civil liberties, by the time of the
election campaign the use of the so-called "red" issue be-
came repugnant to the people and every political candidate
who was not afraid to face the issue was elected.

At the same time, the labor federations were learning
that the frantic pursuit of "subversives" provides no
answer to labor's problems. They are now calling for real
protection of civil rights. More and more elements of the
community are speaking out in defense of the Bill of
Rights.

1955 is a year of promise. Yes, it will also be a year of struggle for the survival of a free trade union movement in the United States. President Eisenhower's threat of 50 years of cold war is the big business road to poverty, insecurity and destruction. The Brownell-Butler law will face our Union and, before long all unions, with the threat of a Hitler-type labor front. Further raids, indictments of union officials under the Taft-Hartley law or other anti-labor statutes, pose continuing burdens for our members.

• • • • •

[7] President Clark: • • •

[8] At this time, I am going to read off the committees.

RULES AND ORDER COMMITTEE

Linus Wampler Chairman

• • • • •

RESOLUTIONS COMMITTEE

Alton Lawrence, Irving Dichter Co-Chairmen

• • • • •

CREDENTIALS COMMITTEE

Albert Pezzati Chairman

• • • • •

COMMITTEE ON ORGANIZATION

Ernest Salvas Chairman

• • • • •

COMMITTEE ON PRESS AND EDUCATION

William Kennedy Chairman

• • • • •

COMMITTEE ON WAGE AND CONTRACT POLICY

Orville Larson Chairman

• • • • •

[9] COMMITTEE ON DEFENSE

J. B. Chavez Chairman

• • • • •

LEGISLATIVE & POLITICAL ACTION COMMITTEE

Raymond Dennis Chairman

* * * * *

COMMITTEE ON THE CONSTITUTION

C. J. Powers Chairman

* * * * *

[27] WEDNESDAY MORNING SESSION

March 16, 1955

* * * * *

[34] Committee Secretary Edward H. Coleman: The Committee received the following resolutions on Peace, Jobs and World trade: Numbers 152, 153, 154, 159, 160, 163, 166, 168, 170, 171, and 173.

* * * * *

[40] The Committee has incorporated all of these resolutions, as well as the section of the President's Report on peace, into one master substitute resolution, as follows:

The news that disastrous fall-out effects would cover an area of 7,000 square miles after explosion of a single atom bomb has been an eye-opener for millions of Americans.

* * * * *

The new idea, "co-existence," is now getting full, serious discussion by common people everywhere. The idea is simple: that the Western capitalist nations can live on the same planet as the Eastern socialist countries—without going to war.

The final ending of the civil war in French Indo-China, the increased trade across various "curtains" separating east and west, the greater willingness to replace negotiation for sabre-rattling—all these are proof that the peace forces have grown tremendously in the last year.

* * * * *

[60] WEDNESDAY AFTERNOON SESSION
March 16, 1955

• • • • •
[86] That part of the President's Report dealing with Civil Liberties reads as follows:

In the eighteen months since our St. Louis convention, we have seen the assault on civil liberties reach a new peak. But at the same time the fight-back spirit has also grown enormously, as the American people began to learn that McCarthyism can be beaten.

Early last year, Attorney General Herbert Brownell, Jr., launched his 10-point program for legislation to widen the national witchhunt and make it easier. Both the NAM and the U.S. Chamber of Commerce pushed this program. Every part of this Brownell package infringed on time-tested civil liberties guaranteed by the Constitution and Bill of Rights. Wire-tapping, immunity for witnesses, perjury laws, loss of citizenship for political conviction, screening of workers, and licensing of trade unions—all these were in the shotgun Brownell package.

All these measures passed except one to legalize wire-tapping, the perjury bill, and the worker-screening bill which was dropped because Congress adjourned. Most openly antiunion was the misnamed Communist Control Act of 1954, which we have come to know as the Brownell-Butler Act. Here the issue of Communism is blatantly used to cover up the real union-busting intentions of those who framed the law.

Organized labor was united in its opposition to this bill, and a determined stand was made. But the extreme reactionaries bullied the bill through, and the President quickly gave it his blessing. Unfortunately, as this battle went on there were some Democrats, usually on the liberal side, who in their desire for re-election out-red-baited the Republican red-baiters.

No union in America can feel safe as long as this law is on the books. One of our main jobs must be to stir everyone we can to join the campaign for repeal of the Brownell-Butler act.

Meantime, the numbers of Americans indicted or convicted for so-called "political crimes" has increased tremendously.

Under the Smith Act, hundreds of Americans continue to be indicted and convicted for dissenting and unorthodox opinions. Speeches, hearsay evidence and quotations from books, some written a hundred years ago, are the basis for the government's case against these individuals.

In addition, our time honored rules of fair play for the alien are being set aside. Thousands of individuals who for all intents and purposes live and think as Americans are being threatened with deportation under the McCarran-Walter act. Many of these individuals have [87] resided within our shores for as much as 40 or 50 years and have contributed immensely to the struggle in our country of a better life for all Americans.

It has been estimated that if the McCarran-Walter law remains on our statute books or continues to be applied as it is now, some eight million Americans will be affected in one way or another.

Coincident with the drive against political dissenters and aliens, the Justice Department has increased the number of indictments and convictions it seeks under the non-Communist affidavit section of Taft-Hartley. In our own union, the unjust conviction of Clinton Jencks on the false testimony of Harvey Matusow was followed by the politically inspired indictment of Brother Travis.

In other unions, the list also grows. The government has won convictions at a lower court level or secured indictment of labor leaders such as Brother Gold of the

Furriers union, Brother Bryson of the Marine Cooks and Stewards, Brother Fisher of the CIO Woodworkers union, and others.

Equally shocking was the use of a Congressional committee to create a blacklist of workers. Workers, many with long seniority were fired from their jobs by General Electric and other corporations because they exercised their 5th Amendment privilege before the McCarthy committee.

But the same McCarthy, who had become a symbol of repression in the United States, has been knocked from his pinnacle of power in the last year. People have been speaking out against the abuse of witnesses by witch hunting committees. In a recess session called immediately after the Congressional elections, the U.S. Senate, as a result of growing opposition in the press and among the people of the country to McCarthyism, voted overwhelmingly to censure McCarthy. The campaign to bust McCarthy's power was marked by a more open and courageous speaking out by Senators against the procedures being used by Congressional investigating committees in recent years. We must do all we can to press for approval of the proposals which have been advanced to protect the basic rights of any witness, and to abolish one-man hearings and witch hunt circuses.

But civil liberties can only be restored to their high place in our country by a rededication of the principles of freedom established in our Constitution. First and foremost, the Smith act must be repealed. The same is true of the McCarran Internal Security act, which further carries out the purpose of the Smith act.

Labor specifically must have its full freedom of action restored by repeal of the Taft-Hartley act as well as the Communist Control act, or as it is better known, the Brownell-Butler act.

Finally, we give our support to the legislation now introduced in Congress which calls for basic revision of the McCarran-Walter immigration law. However, we call for further revision to return full security of life and happiness to the alien living with us.

President Clark: Moved by Co-Chairman Dichter, seconded by Ray Graham, Local 16. All in favor will say "Aye"; any opposition? The motion is carried and so ordered.

• • • • •

[316] INTERNATIONAL EXECUTIVE BOARD

John Clark, President

Orville Larson, Vice-President

Asbury Howard, Vice-President

Albert Pezzati, Secretary-Treasurer

Ernest Salvas, Board Member, District 1

J. B. Chavez, Board Member, District 2

Raymond Dennis, Board Member, District 3

Linus Wampler, Board Member, District 4

Alton Lawrence, Board Member, District 5

Irving Dichter, Board Member, District 6

C. J. Powers, Board Member, District 7

William Kennedy, Board Member, District 8

Exhibit MM 128

PROCEEDINGS

OF THE

51st CONVENTION

INTERNATIONAL UNION OF MINE,
MILL AND SMELTER WORKERS

MARCH 19 - 23

1956

HOTEL NEWHOUSE
SALT LAKE CITY, UTAH

• • • • •

[66] WEDNESDAY AFTERNOON SESSION
March 21, 1956

• • • • •

[74] Committee Secretary Rohrer: Resolution No. 1, from Local 758. It deals with the question of Civil Liberties. The Committee reports out Resolution No. 1 on Civil Liberties, as the master resolution on Civil Liberties.

The American working men and women have been staunch in their defense of democracy in the period of McCarthy hysteria. As a result, while basic civil liberties were chipped away, a counter-movement for democracy has succeeded in stopping America's would-be fascists in their tracks.

Constitutional liberties have been restored on some important fronts in the last year and a basis has been laid for the reaffirmation of basic American liberties permitting full freedom of speech, press, assembly and of labor's right to organize and bargain collectively.

[75] But dangerous and unconstitutional laws are still on the statute books which have resulted in the imprisonment and persecution of people because of ideas, beliefs, advocacy

of union organization, of dissent from conformity on administration policy and for organizing popular protest on issues of the day.

Under a so-called Communist Control Act, our own union is now faced with action by the Eisenhower administration which could result in government control of our organization and lead to dictation by Big Business of all labor unions. Our union's efforts to improve the wages and working conditions of working people in the shops, mines and mills is considered evidence of "Communist infiltration" under a law passed by a hysterical Congress in 1954.

Indictments of union officers under the Taft-Hartley Law and the attempt of Congressional witch-hunters to smear militant unions and their active members is a sign that we have not yet won back our democratic rights let alone helped to establish a free and democratic atmosphere in which people can live and work without fear of persecution, harassment, intimidation and imprisonment.

Labor and the people of our country have counterattacked and delivered some important blows to McCarthyism. But the job has only begun and greater efforts are required to:

1. Quash the indictment against Mine-Mill which requires hearings before the "Subversive Activities Control Board." But the persecution of Mine-Mill is part of a national dragnet against all militant unions and organizations. This calls for the repeal or nullification (by Supreme Court action) of the so-called "Communist Control Act" (McCarran Act) of 1954.

2. Stop witch-hunting by Congressional committees. The primary purpose of Congressional committees is to consider proposals for legislation and not to act as judge and jury on the activities of individuals and organizations. Congress should be called upon to refuse funds for Congressional witch-hunts.

3. Repeal anti-labor and other undemocratic laws which proscribe the organization, expressions and movements of Americans. This would require repeal of the Taft-Hartley Law, the Smith Act, and all state legislation which provides for so-called loyalty oaths or outlaws or curtails the activities of civic, fraternal, political, religious, academic, social or other organizations.

4. Free the victims now in jail, under indictment, or appealing convictions under the thought legislation now on the statute books.

The Committee recommends concurrence.

Committee Chairman Dichter: Brother Chairman, I move its adoption.

President Clark: Moved by Chairman Dichter of the Committee for adoption, seconded by Brother Mannion, Bingham Canyon Local 485. Any discussion on the motion? These are pretty important resolutions and I don't think we should go by without some sentiment expressed on the floor.

• • • • •
[80] President Clark: Any further discussion? Are you ready to vote? The question being called. All in favor will say "Aye"; any opposition. The motion is carried and so ordered.

• • • • •

Appendix I

[219] Annual Report of President John Clark

INTRODUCTION

SPOKANE TO SALT LAKE CITY

Since we met last March in Spokane, four developments have dominated the industrial scene and have been decisive in determining the course that labor, including our own union, has had to choose.

These developments were: (1) the amassing of stupendous profits by the corporations; (2) the open control of government by big business; (3) the sharp rise in wage struggles and the duration and bitterness of strikes, and (4) the forging of labor unity as a means of self-protection and survival of unions.

Exhibit AG 101

PP. 47-48

3.(h)

The Union has opposed legislation enacted for the control and punishment of subversive activities, such as

1. The Smith Act

CP LINE

* * * *

"Repressive legislation, from Taft-Hartley to the Smith and McCarran Acts, have already taken a heavy toll. With labor's worst enemies now in control of the White House, the sharp edge of the slave-labor Taft-Hartley law slashes away at the hard-won rights of labor. Smith Acts indictments, from New York to Hawaii, have imprisoned Communist Party leaders, militant trade-unionists and other advocates of peace. The Nazi-like McCarran Walters Act strikes at all foreign born, citizens and non-citizen alike, with its racist immigration policy, its deportations and its concentration camps. . . .

MINE MILL LINE

* * * *

"Defeat all police-state legislation, such as the Mundt-Nixon and McCarran bills, abolish the House Un-American Activities Committee, and repeal the Smith Act." (*Official Proceedings of the 46th Convention of the International Union of Mine, Mill and Smelter Workers, held in Denver, Colo., Sept. 11-15, 1950, p. 183. Report of President John Clark.*) (A.G. 102C, p. 111).

* * * *

"Under the Smith Act, hundreds of Americans continue to be indicted and convicted for dissenting and unorthodox opinions. Speeches, hearsay evidence and quotations from books, some

CP LINE

"On this May Day, let us join in common effort to fight:

"For an immediate ceasefire in Korea! . . .

"For peaceful trade with all nations, for the resumption of unhampered trade with the Soviet Union, Peoples' China and the East European democracies! . . .

"For the preservation of American liberties: for repeal of the Taft-Hartley McCarran-Walters and the Smith Act; amnesty for all Smith Act victims!"

(*Political Affairs*, May 1953, Vol. XXXII, No. 4, "May Day Manifesto by National Committee, CP USA".) (A. G. 103B, pp. 150, 151)

* * * *

MINE MILL LINE

written a hundred years ago, are the basis for the government's case against these individuals.

"In addition, our time honored rules of fair play for the alien are being set aside. Thousands of individuals who for all intents and purposes live and think as Americans are being threatened with deportation under the McCarran-Walter Act. Many of these individuals have resided within our shores for as much as 40 or 50 years and have contributed immensely to the struggle in our country for a better life for all Americans." (*Official Proceedings of the 50th Convention of the International Union of Mine, Mill and Smelter Workers, held in Spokane, Wash., March 14-19, 1955, p. 254.*) (A.G. 102C, p. 174).

P. 51

3(h) 4. The Communist Control Act

CP LINE

"Of primary importance is the Internal Security Act of 1950 and the Communist Control Act of 1954. These acts, if upheld by the Supreme Court, will outlaw a political party for the first time in American history, tighten up measures for policing the labor movement, and lay the legal basis under certain circumstances to turn our country into a complete police state. The defeat of these laws constitutes the main task of all democratic forces. . . .

"The Internal Security Act of 1950 and the Communist Control Act of 1954 are the main weapons with which the reactionaries hope to destroy the Communist Party now, and later labor and popular movements generally." (*Political Affairs*, Sept. 1955, pp. 34, 37. "The Struggle to End the Cold War at Home" by Claude Lightfoot.) (A.G. 103B, pp. 160, 163).

* * * *

MINE MILL LINE

"American working people were stunned by the news that President Eisenhower had actually signed the combination Humphrey-Dies-Butler Bill. It is a law that violates the Constitution far more completely than any ever before proposed in Congress — much less enacted." (*The Union*, Aug. 30, 1954, p. 5) (A.G. 102D, p. 214).

"Most openly antiunion was the mis-named Communist Control Act of 1954, which we have come to know as the Brownell-Butler Act. Here the issue of Communism is blatantly used to cover up the real union-busting intentions of those who framed the law. . . .

"Labor specifically must have its full freedom of action restored by repeal of the Taft-Hartley act as well as the Communist Control Act or as it is better known, the Brownell-Butler Act." (*Official Proceedings of the 50th Convention of the International Union of Mine, Mill and Smelter Workers*, held in Spokane, Wash., March 14-19, 1955, pp. 253, 255. Report of President John Clark.) (A.G. 102C, pp. 173, 175.)

P. 72

3.(h) 18. Charged the United States Government with the practice of genocide

CP LINE

"They (seven Virginia Negroes) are dead because the system of semi-slave labor based on 'white supremacy' is needed not only by the landlords and industrialists of the South. It is also needed for the Anglo-Saxon war banner of the Mac-Arthurs and Eisenhowers. They are launching genocidal war against the colored peoples of Asia." (*Daily Worker*, February 6, 1951.) (A.G. 103 A p. 70).

MINE MILL LINE

"Labor and the entire world was deeply shocked during the past year with the publication of a volume entitled, 'We Charge Genocide', a documented petition to the United Nations for relief from 'a crime of the United States government against the Negro People.' ...

"Even after the first petition was prepared by the Civil Rights Congress last October, the list of new acts of genocide against the Negro people assumed shocking proportions." (*Official Proceedings* of the 48th Convention of the International Union of Mine, Mill and Smelter Workers, held in New York, N.Y., Sept. 8-12, 1952, p. 229. Report of Clark.) (A.G. 102 C p. 155.)

BRIEF FOR PETITIONER

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,135

INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS,

Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD,

Respondent

On Review of Order of the Subversive Activities Control Board

United States Court of Appeals
for the District of Columbia Circuit

FILED DEC 26 1963

Nathan J. Paulson
CLERK

Nathan Witt,
P. O. Box 156,
New York 23, N. Y.

Joseph Forer,
711 14th St. N. W.,
Washington 5, D. C.

Attorneys for Petitioner

Questions Presented

1. Whether an order of the Subversive Activities Control Board declaring petitioner to be a Communist-infiltrated organization under the Subversive Activities Control Act of 1950, as amended by the Communist Control Act of 1954, is supported by a preponderance of the evidence.

2. Whether the Board's conclusory findings and order are supported by its evidentiary findings.

3. Whether the order and findings of the Board are based on incompetent and irrelevant evidence.

4. Whether the Board erroneously applied the three-year limitations applicable to the definition of a Communist-infiltrated organization.

5. Whether the order is vitiated because of the confused nature of the Board's findings and because the Board's conclusions are not intelligibly connected to evidentiary findings.

6. Whether the Board misapplied and misconstrued various provisions of the Act, including sections 3(4A) and 13A(e).

7. Whether the Board erred in denying Union requests for the production of reports of interviews with witnesses for the Attorney General.

8. Whether the provisions of the Act relating to Communist-infiltrated organizations are unconstitutional on their face and as applied.

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| Hearings before House Comm. UnAmer. Activities, 81st Cong., 2d Sess., on H. R. 3903 & 7595 ----- | 70 |
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| U.S. Dept. of Labor, Union Constitution Provisions, Bull. No. 1239 ----- | 6 |

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,135

INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS,

Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD,

Respondent

On Review of Order of the Subversive Activities Control Board

BRIEF FOR PETITIONER

JURISDICTIONAL STATEMENT

This case presents for review an order of the Subversive Activities Control Board, issued May 4, 1962, declaring petitioner, the International Union of Mine, Mill and Smelter Workers, to be a Communist-infiltrated organization within the meaning of section 3(4A) of the Subversive Activities Control Act of 1950, added by the Communist Control Act of 1954, 68 Stat. 777, 50 U. S. C. 782(4A)(1 J.A. 149).^{1/}

1. The Subversive Activities Control Act, as amended, is hereafter called the Act. The Subversive Activities Control Board is called the Board. Petitioner is called the Union. References to the Board's Report include the Recommended Decision, which the Board adopted with minor changes (1 J.A. 14-15). Exhibits introduced at the administrative hearing by the Attorney General are cited AG Ex. Exhibits introduced by the Union are cited MM Ex. "Par." refers to a numbered paragraph of the Recommended Decision.

The jurisdiction of the Board arose under section 13A(f) of the Act, 68 Stat. 779, 50 U.S.C. 792a(f).

The jurisdiction of the Court arises under section 14(a) of the Act, 64 Stat. 1001, amended 68 Stat. 780, 72 Stat. 950, 50 U.S.C. 793(a). It was invoked pursuant to that section by the filing on June 29, 1962, of a petition to review and set aside the order of the Board.

STATEMENT OF THE CASE

In our argument we examine in detail the Board's evidentiary findings. We will here limit ourselves to facts which are undisputed and which furnish a background important to an understanding of the case.^{2/}

The Union represents workers in the mines and processing plants of the non-ferrous metals industries in the United States and Canada. It was founded in 1893 as the Western Federation of Miners and adopted its present name in December 1916. From its inception until 1938, the Union was affiliated with the American Federation of Labor, from 1938 to 1950 with the Congress of Industrial Organizations. Since 1950 the Union has not been affiliated with any national labor federation. (1 J.A. 29-30.)

The Union charters local unions throughout the United States -- 103 at the time of the Board hearing (MM Ex. 155) -- which are allocated geographically into seven districts. Prior to 1955, the Canadian locals comprised an eighth district, but since then they have been autonomous. (1 J.A. 29-30.)

The Union's governing body is its annual convention, composed of

2. Because the facts are undisputed and the record is so large, our annotations to the record will be illustrative rather than comprehensive.

delegates elected by the local unions. Between conventions, the Union's affairs are directed by the International Executive Board, which consists of the four international officers -- the president, two vice-presidents, and the secretary-treasurer -- and a board member from each district.^{3/} The officers and the other Executive Board members hold office for terms of two years, nominations taking place at the conventions held in odd-numbered years and elections being by secret referendum of the entire membership. (1 J.A. 31; MM Ex. 134)

The Union's staff includes a research director, an editor of its monthly periodical, and a number of organizers who are called International Representatives or, when possessed of somewhat greater responsibility, Regional Directors. The International Representatives and Regional Directors engage in organizing activities and in servicing the local unions in negotiations, handling of grievances, and other matters in which the locals require help. The members of the staff, as well as clerical and office employees, are hired and fired by the Union president, subject to approval by the Executive Board. The locals elect their own officers. (1 J.A. 31, 133; MM Ex. 134.)

The Union has an outstanding record of improving the wages, hours and working conditions of its members and other workers of the non-ferrous metals industries. For example, from 1946 to 1960, average hourly earnings in copper mining rose 159.2% as compared to an increase in the consumers price index of 62.7%. These gains compare favorably with those made by the dominant unions in such other basic industries as steel, auto

3. Because of insufficient membership, District 4 has not had a board member since the mid-1950's (1 J.A. 31 ftn.).

and rubber (MM Ex. 175). The Union has also had notable success in obtaining and extending so-called fringe benefits -- pensions, health, welfare and hospitalization plans, paid vacations, holidays, sick leave, premium pay for overtime and shift work. Because the industries within its jurisdiction are characterized by abnormal safety hazards and a wide prevalence of occupational diseases -- silicosis, lung cancer, lead poisoning, etc. -- the Union has devoted particular attention to health and safety measures, including the development of programs for federal and state legislation, safety education in the industry, and the organization of safety committees jointly with employers. (1 J.A. 76, 139; Tr. 6753-66; MM Exs. 175, 190.)

The Union has been responsible in avoiding strikes except as a last resort and in preventing "wildcat" strikes in violation of no-strike clauses in Union-employer contracts (Tr. 6776-81).

The Union operates under highly democratic procedures and rules. The only requirement for Union membership is employment within the Union's jurisdiction (MM Ex. 134). Each local union elects its officers and delegates to the Union's annual conventions (the number of delegates depending on the local's size) by secret ballot following nominations made at prior meetings. Any Union member who is current in his dues may make nominations, vote, and run for office. Attendance at local meetings is encouraged. Any member who wants to speak at a local meeting is given the floor, and there has never been any suggestion of reprisal or threat against any member for saying or voting as he pleased. Strikes and collective bargaining agreements are always voted on by the membership, and rank-and-file committees invariably participate in

negotiations with employers. Local unions sometimes endorse candidates for political office or take positions on legislation and other political matters. If they do so, they act after discussion and vote by the membership and without dictation or sanction from the national office of the Union. (1 J.A. 133-36; Tr. 6082-93, 6100-05.)

At the Union conventions, any delegate who desires is given the floor. All action is taken by majority vote. The only requirement for eligibility for national office or membership on the International Executive Board is continuous good standing as a Union member for twelve months. Nomination by a single delegate is sufficient without even the necessity of a second. The international officers and other members of the International Executive Board are, as already stated, elected by secret referendum. Any significant amendment of the Union's constitution and any important policy matter which arises between conventions must be submitted to a secret referendum of the membership. A representative sampling of the Union's membership, consisting of 111 rank and file members from 55 locals, testified at the hearing and uniformly asserted that the Union is controlled by its membership. (1 J.A. 133-34, 137; Tr. 6096-97, 6111.)

Because of the frequency of its conventions, ease of eligibility requirements for office, limited terms of office, and membership opportunity to determine its policies, the Union is undoubtedly foremost in the American labor movement in terms of union democracy.^{4/}

4. A study made in 1959 of 70 unions (including all the largest and most important) with a total membership of almost 16,000,000, names the Union as the only one which provides "an easy way of putting a vital policy question to the vote" of the membership. Bromwich, Union Consti-

On July 28, 1955, the Attorney General filed with the Board a petition alleging that the Union is a Communist-infiltrated organization (1 J.A. 16). Hearings for the taking of evidence commenced on February 25, 1957, before a Board member sitting as an examiner, and concluded on March 10, 1961 (1 J.A. 17, 20). On December 26, 1961, the examiner issued a Recommended Decision adverse to the Union (1 J.A. 148). On May 4, 1962, the Board issued the order under review (1 J.A. 149). Simultaneously, it issued its Report, which adopted the findings and conclusions of the Recommended Decision with a few minor changes (1 J.A. 14-15).

Under section 13(h) and (i) of the Act, a union which has been finally found to be a Communist-infiltrated organization is barred from representing employees.^{5/} Accordingly, if the Board's order is sustained

tutions (The Fund for the Republic) p. 10. The Union was one of only two of 111 unions studied by the Department of Labor in 1958 in which officers' salaries are determined by membership referendum. U. S. Dept. of Labor, Union Constitution Provisions, Bull. No. 1239, p. 2. The salary of the Union's president is one of the lowest paid to union presidents, including presidents of much smaller unions (*id.*, p. 23). The Union is probably the only union in the country whose membership also votes on the expense allowances of its officers and staff (MM Ex. 134, Art. 13). The reform measures enacted by the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401 ff., were either already observed by the Union or exact lesser requirements than those already in effect in the Union. Thus the Union's members already enjoyed all the rights guaranteed by 29 U.S.C. 411, called the Bill of Rights of Members of Labor Organizations. The statutory limits on the imposition of trusteeships on local unions (29 U.S.C. 462) confers greater power on national unions than the Union allows itself (MM Ex. 134, Art. 20) with respect to the purposes for which trusteeships may be imposed and their duration. The statute permits five-year terms for national officers, three-year terms for local union officers, and election at conventions. 29 U.S.C. 481. The Union has two-year terms for its national officers, one or two-year terms for local officers, and elections by secret referendums of all members (MM Ex. 134).

5. Under section 10 of the Act, such a union must also label its publications and broadcasts as disseminated or sponsored by "a Communist organization."

on judicial review, the Union will be unable to continue its existence. And the workers in the non-ferrous metal industries will lose the right which they have exercised for seventy years to protect their interests by organizing themselves in the labor union of their choice.

STATUTE INVOLVED

Pertinent provisions of the Act appear in the Appendix to this Brief.

STATEMENT OF POINTS

1. The Board erred in declaring petitioner to be a Communist-infiltrated organization.
2. The Board erred in refusing to find that petitioner is not a Communist-infiltrated organization.
3. The Board erred in failing to make adequate and intelligible findings.
4. The Board erred by misapplying the three-year provisions of the Act.
5. The Board otherwise erred in construing and applying sections 3(4A) and 13A(e) of the Act.
6. The Board erred in refusing to require production of reports of interviews with witnesses of the Attorney General.
7. The provisions of the Act relating to Communist-infiltrated organizations are unconstitutional on their face and as applied.

SUMMARY OF ARGUMENT

I.

A. The three-year provisions in sections 3(4A) and 13A(e) of the Act were intended to withhold from Board consideration any Communist activities and associations of unions and their leaders, if those activities and associations were more than three years old at the time of the Board proceeding. In Communist-infiltrated cases, the Board's inquiry is more confined than that permitted in Communist-action or front cases, in which the Board has habitually relied on remote evidence plus a presumption of continuity.

B. The Board flagrantly disregarded the limiting function of the three-year provisions. Contrary to Congress' purpose not to penalize unions for retaining their officers regardless of the officers' political affiliations prior to the three-year period, the Board stated that the three-year period was not important in this case because of the continuity of the Union's leadership. And the Board showed ignorance or defiance of the legislative purpose by expressly relying on the Supreme Court's approval of the temporally unlimited inquiry in the Communist Party case.

The Board's findings were made in violation of the three-year period. Of the many persons found to be Communist Party members, there is only a handful concerning whom there is evidence of Party membership or activity in the three-year period. The Board failed to specify the time of supposed Party membership, often concealed the date to which the evidence related, and then made findings of the membership as if

it were an immutable condition.

Under the Act, the relevant facts are the Communist Party activities within the three-year period of those persons who are the organization's directors at the time of the Board proceeding. Party activities of preceding directors are irrelevant. Yet the Board relied heavily for its control conclusion on findings of Party membership of persons who were not Union directors on or after July 28, 1955, the date on which the Attorney General filed his petition.

The Board's evidentiary discussion is for the most part concerned with events prior to the three-year period.

The Board held that the three-year period consisted of the three years immediately preceding July 28, 1955, the date on which the Attorney General filed his petition. Under the circumstances here, and on principle, the three-year period should consist of the three years immediately prior to the Board's Order of May 4, 1962 or the closing of the evidence on March 10, 1961.

For the purposes of our analyses of the evidence, we treat the three-year period as running from July 28, 1952 to March 10, 1961.

II.

A. 1. The Board found that six members of the Union's 11-man Executive Board of July 28, 1955 "were shown to have been members of the Communist Party or affiliated with the Party." It also apparently described Clark and Salvas as being "amenable and submissive" to the Party members on the Board. The findings are vague because the Board does not say when the membership or affiliation existed, nor which of the

individuals are members and which affiliates of the Party.

Under the Act, the relevant consideration is not Party membership or affiliation or submissiveness, but whether the directors have, within the three-year period, been actively engaged in giving aid or support to the Party. The Board, however, made no findings on the relevant issue, apparently erroneously equating Party membership with being actively engaged in giving aid and support to the Party.

2. Of the six members of the Executive Board found to have been Party members or affiliates, there is no probative evidence as to four of membership or affiliation within the three-year period. As to them and a fifth, there is no probative evidence that they engaged in giving the Party aid or support within the period. Nor is there any evidence to support the Board's characterization of Clark and Salvas as submissive to Communists.

3. Of the seven newcomers to the Executive Board after July 28, 1955, the Board did not find that five ever were members or affiliates of the Communist Party. The Board's finding that a sixth was a Party member is based on hearsay. The Board made no finding that any of the seven was actively engaged in giving aid or support to the Party.

B. Since members of the Union's staff are not directors or managers of the Union, the Board erred in relying on findings that staff members were members of the Communist Party.

The Board listed 45 names of International Representatives as having been shown to have been members of the Communist Party. After eliminating errors, duplications, and findings not supported by evidence,

the list shrinks to only six as to whom the evidence may justify a finding of Party membership in the three-year period. And the Board never made a finding of the critical point, namely, that any staff member was actively engaged in giving aid and support to the Party.

C. Since clerical employees are not directors of the Union, the Board also erred in relying on findings that some of the Union's clerks were members of the Communist Party. Of the six clerks found to be Party members out of 178 clerical employees, the evidence is inadequate as to three.

D. The Board found that all Executive Board members and staff employees whom it found to be members of the Communist Party had knowledge of the nature and purpose of the Party for the purpose of section 13A(e)(1). This finding was made en masse on the basis of unspecified conduct. The finding is irresponsible and without support and violates the Board's obligation to make adequate and intelligible findings.

The Board never defined what scienter was needed for the purposes of section 13A(e)(1). The correct construction requires knowledge of the illicit characteristics and objectives attributed to the Party by section 2. The Board did not apply this standard and perhaps applied none at all.

E. The Board also made miscellaneous findings regarding the control component on the filling of vacancies, Communist Party meetings at the home of Union employees, discussions of Union affairs with Party officials, discharges of anti-Communist employees, and the Union's refusal to bar Communists from office. The findings are gross distortions of the evidence.

III.

A. The Board failed to identify the evidentiary findings, basic or intermediate, and the reasoning from which it derived its conclusions on the means component and the application of section 13A(e)(3). For this reason alone, the Board's order must be set aside or remanded for the supplying of an intelligible exposition of the bases for the Board's ultimate conclusion.

B. 1. "Aid or support" in section 3(4A) means aid which forwards the illicit objectives attributed by section 2 of the Act to the world Communist movement and Communist-action organizations. These objectives are the overthrow of the government by any means necessary, including force and violence, and the substitution of a Communist totalitarian dictatorship which will be subservient to the Soviet Union. The limiting construction is necessary for constitutional reasons, since the Act was sustained as a protection against foreign domination and dangerous activities.

There is no evidence and no finding that the Union has served as a means for aiding or supporting the Communist Party in achieving illicit objectives.

2. Even if "aid or support" means any kind of aid to the Communist Party, the evidence fails to show it.

(a) There is no evidence or finding that the Union contributed anything tangible to, or performed services for, the Party. This is proved by the Board's failure to make a finding adverse to the Union in or near the language of section 13A(e)(4). The Board erred in not

giving the Union a credit under that section.

(b) The Board made a finding under section 13A(e)(2) that the Union's policies have been formulated and carried out by or on the advice of Communist Party members holding leadership positions in the Union and by non-Communist leaders who were amenable to the Party and cooperated with the Party member-officials.

Since the Board's findings on Party membership and amenability are not supported by the evidence, the 13A(e)(2) finding necessarily falls.

The finding also misconstrues the section. The section refers to formulation of policy by persons outside of the regular directorate of the organization. Nor does the section authorize consideration of the participation in policy matters of persons who are merely amenable to the Party, but not Party members, agents or representatives.

(c) The basis for the Board's finding under section 13A(e)(3) is obscure. Nor is there any evidence that the Union promoted the objectives of the Communist Party, as the Board found. The Board apparently condemned the Union because of the supposed motivation of its officers in working hard for the interests of the Union's members and because the Union adopted resolutions contrary to the political views of the Board. The Board's premises are inaccurate and unsound.

(d) The Board's theory seems to be that the Union's directors are using it to aid and support the Party by having the Union adopt Communist positions and by indoctrinating the Union members. A fundamental flaw in this theory is that the Union is democratically run by the members. The Board solved this problem by finding that the directors have brainwashed the members so that the latter blindly follow the former.

It is impossible to sustain an order which rests on a probing of the mental state of thousands of American workers. The findings which the Board makes to support its conclusion of brainwashing have no evidentiary support.

(e) The Board relied, for both its control and means conclusions, on a finding that the Union has never deviated from positions taken by the Party. Nondeviation, however, is not a test of Communist-infiltrated organizations, as it is of Communist-action and front organizations. Nor was nondeviation established here.

(f) There was no evidence that the Union was affiliated with the Communist Party. Therefore the Board erred in failing to give the Union a credit under section 13A(e)(5).

(g) The Board misapplied section 13A(e)(6), since it made its finding of secrecy in connection with Party members in the Union, and not Party members who manage the Union's affairs. The finding is also vitiated by the Board's numerous errors in determining who are Party members. In any event, concealment of Party membership has very little, if anything, to do with the issue of whether a union is Communist-infiltrated.

IV.

A. The Board refused to require production of interview reports of six witnesses for the Attorney General, after determining on the basis of affidavits from the interviewing agents that the reports were not "statements" under the Jencks statute. The authorities establish, however, that where extrinsic evidence is needed to determine if documents

are witnesses' statements, the interviewers must be called to testify and be submitted to cross-examination.

B. The record indicates that counsel for the Attorney General had in their possession notes or memoranda of counsel's interviews with witnesses for the Attorney General. No such notes or memoranda were produced for in camera inspection or otherwise. It is the obligation of the government to inform the Court of the facts. If such notes or memoranda existed, the case must be remanded for Board determination of whether the documents were producible as statements of the witnesses.

V.

A. The Act's registration provisions for Communist-action organizations were held valid on the grounds that the First Amendment interest of the Party and its members in preserving the anonymity of the members was out-balanced because (1) Communist-action organizations are, by definition, controlled by a foreign power; (2) such organizations, by definition, engage in dangerous activities; and (3) disclosure of the membership of the organizations is a pertinent method to protect against such activities.

Here one side of the scale is weighted by the interests of thousands of non-Communist workers in preserving their labor union and choosing their own union officers and the interests of their officers in holding their positions. On the other side of the scale there is none of the matters found in the Party case. A Communist-infiltrated organization is not, by definition, under foreign control or under Communist Party

control. Nor is it engaged in dangerous activities. The Union's offense is that it allows its members to hear ideas which the Board labels Communist. This is an exercise of rights guaranteed by the First Amendment and cannot outweigh First Amendment interests. There is, therefore, nothing to justify the Act's invasion of the First Amendment area.

Nor are the Act's sanctions pertinent to the protection of the national security. If that objective demands the exclusion of Communists from union leadership, the solution is not to destroy unions, but to bar Communists from office. And this has already been done by federal legislation.

B. It is a necessary foundation of the Board's order that the Communist Party be a Communist-action organization. The Board held this foundation established by its finding against the Party. This procedure violated the due process principle that persons may not be found subject to liability without an opportunity to contest in a hearing the factual issues on which the liability is predicated.

ARGUMENT

I. The Board misinterpreted and misapplied the three-year provision.

A. The limiting function of the three-year provision.

Section 3(4A) of the Act defines a "Communist-infiltrated organization" by the presence of two components. The first of these we call the control component, the second the means component.

The control component exists if the organization is substantially

directed, dominated or controlled by individuals who are, or within three years have been actively engaged in, giving aid or support to a Communist-action organization, i.e., the Communist Party.^{6/} The means component exists if the organization is serving, or within three years has served, as a means for the giving of aid or support to the Communist Party. Similar references to a three-year period are contained in section 13A(e), which provides certain guidelines for the Board's determination.

Despite the three-year provisions, the Board's determination is for the present; the Board must decide if the organization is a Communist-infiltrated organization, not whether it was one within a three-year period. See opening clauses of subsections (a), (b), (e), (h) and (i) of section 13A and last sentence of section 13A(f). But whether an organization presently is a Communist-infiltrated organization is made to depend on the facts which existed within the preceding three years.

No three-year provision appears in the Act's definitions of, or evidentiary guidelines for, Communist-action and Communist-front organizations. Secs. 3(3) and (4); 13(e) and (f). Under those provisions, the question is whether accused organizations meet the definitions "at the time of the inquiry by the Board." National Council v. S.A.C.B.,

6. We ignore throughout this Brief, as did the Board, the references in sections 3(4A) and 13A(e) to a Communist foreign government and the world Communist movement and the phraseology in section 3(4A) concerning the impairment of the military strength or industrial capacity of the United States. None of the omitted terminology is relevant to this case, the Board having found against the Union solely on the basis of alleged aid or support of the Communist Party.

322 F. 2d 375, 379 (U. S. App. D. C.).

It must not be supposed, however, that the three-year period for Communist-infiltrated organizations enlarges the temporal scope of the Board's inquiry beyond that which applies in Communist-action or front cases. Precisely the opposite is true.

In Communist-action and front cases, it is the practice of the Board to investigate the history and affairs of the accused organization without any limit of time; to consider against the organization evidence of the past, no matter how remote; and to convict the organization by applying, overtly or sub silentio, a presumption of continuity, even though the evidence as to the present or recent past is thoroughly inadequate in itself.^{7/} The function of the three-year provision in Communist-infiltrated cases is to exclude this method by making relevant only associations and practices which existed during the three-year period, foreclosing inquiry into a more distant time. In the Communist Control Act, Congress made a deliberate decision to forgive, to forget, and to withhold from Board consideration, Communist activities and associations of unions and their leaders, if those activities and associations preceded the Board hearing by more than three years. Congress was aware that thereby it was sanctioning the retention in office of union officers who had once been Communists, and that a limitation as short as three years might result in the retention of union officers who were still under the influence of previous Communist

7. For a description of the process, see the Chief Justice's dissent in Communist Party v. S.A.C.B., 367 U.S. 1, 134 ftn. 11.

associations. But Congress preferred these alternatives to the detriments to labor unions which would accompany any raking up of the debris of a more remote period. Such is the picture which emerges from the legislative history.

As reported out of committee, the bill which became the Communist Control Act originally provided a five-year period in sections 3(4A) and 13A(e). Sen. Rep. 1709, accompanying S. 3706, 2 U.S.C. Cong. & Adm. News, 83rd Cong., 2d Sess., 1954, p. 3145. Senator Humphrey proposed the substitution of a one-year limitation. The Senate finally adopted the three-year limitation on a floor amendment introduced by Senator Daniel, who stated that he was "trying to compromise the difference." (100 Cong. Rec. 14213.) Senator Daniel further explained the reason for a time limitation, as follows (ibid.):

"Some argument has been made to the effect that if we provide for too long a period for going back into a person's affiliation with a Communist infiltrated organization [sic] or a Communist action organization, some people might be hesitant about leaving such organizations. . . ."

Senator Butler, the father of the bill, objected to the shortening of the period. The following discussion took place (ibid.):

"Mr. Butler. I believe the reduction from 5 years to 3 years would very adversely affect the bill. . . .

* * * * *

"Mr. Daniel. In what way would it weaken the bill . . . ?

"Mr. Butler. . . . If the law permits us to go back only 3 years with regard to Communist affiliation, in all probability we shall not be able to include a number of persons who should be included.

* * * * *

"Mr. Daniel. If that be true, is it not also true that it means that the organizations have cleansed themselves or in some way have improved in recent years?

"Mr. Butler. No. . . . It means that these people have gone underground.

* * * *

"Mr. Humphrey. . . . Every expert, including Mr. Gouzenko, says that one thing which is needed in any kind of legislation dealing with this problem is an incentive for men and women to leave the Communist Party, so that they will not have scorn heaped upon them and will not be punished for their past action.

"If we provide for going back 5 years, all we are going to do is literally to drive people back into the Communist apparatus, because we are unwilling to accept their cleansing and their willingness to change their pattern of life and become responsible and respectable citizens."

B. The Board's errors in applying the three-year provision.

The Board's Report shows on its face that the Board flagrantly violated the limiting purpose of the three-year period, disregarding it in practice and giving it only faint lip-service. The Board held that the period consisted of the three years immediately prior to the date of the filing of the Attorney General's petition -- i.e., from July 28, 1952 to July 28, 1955^{8/} (1 J.A. 7, 35 ftn. 2). But in its reliance on temporally remote matters, the Report here is indistinguishable from its counterparts in the Communist Party and front cases. The Board adhered to its old habits of throwing into the pot every morsel, no matter how old, it could find. The result is a stew composed almost wholly of over-age ingredients. The following matters demonstrate the Board's errors in applying the three-year provision.

1. The Recommended Decision states (1 J.A. 35, ftn. 2):

8. As to the questionable nature of this holding, see pp. 24-26, infra.

" . . . under the circumstances pertaining to this respondent [i.e., the Union], including, among others, the continuity in office for many years of the top leaders, and while much of the evidence fell within that period of three years, questions as to the meaning of the three year provisions are not of substantial importance."

In like vein, the Report of the full Board states (1 J.A. 7-8):

" . . . as noted in the Recommended Decision, the continuity of significant facts and circumstances from dates prior to July 28 1952, through dates extending beyond July 28, 1955, renders questions as to the three year period relatively immaterial. By way of example, many of the same persons who constituted the important leadership of respondent during the three year period also held leadership positions for varying numbers of years both before, during, and after the three year period."

The significant feature of these passages is not that they denigrate the importance of the three-year period, but that they can specify only one circumstance (all others, though ominously mentioned, are undisclosed) as the reason for doing so. That circumstance is the continuance in office of Union leaders who held office before the commencement of the three-year period. The Board's reliance on this fact is flatly contrary to the legislative purpose that unions would not be condemned for retaining officers who had been Communists prior to the three-year period.

2. As we have seen, it was the legislative purpose to foreclose the kind of temporally unlimited inquiry which the Board conducted in the Communist Party case. In what is either defiance or ignorance of this purpose, the Board's Report (1 J.A. 7) justifies reliance on remote events by quoting the passage from the Supreme Court's decision in the Party case which approved the unlimited historical inquiry there made.

3. The Union leader first found by the Report to be a Communist is Raymond Dennis, a member of the Union's International Executive Board.

The adverse evidentiary findings on Dennis are expressed in seven paragraphs. Six of these relate to incidents preceding July 28, 1952, including his supposed resignation from the Communist Party. The only paragraph which deals with any occurrence within the three-year period relates that about January 1953, Dennis told Gardner, then a Union employee and later a witness for the Attorney General, that an office employee of the Union was the wife of a Communist Party leader and that the Party had assigned her to the job and would be reluctant to remove her. (Infra, p. 34 .) Since no one could rationally suppose that this item establishes, or tends to establish, Party membership, it is obvious that the finding as to Dennis rests exclusively on supposed membership prior to the commencement of the three-year period.

This initial transgression is merely the first instance of the Board's disregard of the three-year limitation in finding Communist Party membership or activities on the part of Union officers and employees. Of the many persons who the Board finds were Communists, there is only a handful concerning whom there is evidence of Party membership or activity in the three-year period. The Board invariably failed to specify the time of the supposed Party membership and often concealed the date to which the evidence of membership related. Then it made findings of Party membership without indicating, and with indifference to, whether the membership was within or before the three-year period. Infra, pp. 29, 33-39, 48-50.

The Board's practice of finding Party membership on the basis of evidence of membership before the three-year period is particularly unjustifiable because of the fact that from August 1949 on, all members of the

Union's Executive Board filed at least once a year affidavits under section 9(h) of the Taft-Hartley Act that they were not members of the Communist Party (1 J.A. 93; Tr. 6642).

4. In determining the control component of section 3(4A), the relevant facts are the Communist Party activities within the three-year period of those persons who are the organization's directors at the time of the Board proceeding. The Communist Party activities of former directors are irrelevant, even if those activities occurred within the three-year period, if those persons were not directors on or after the time of the filing of the Attorney General's petition.

In violation of this principle, the Board relied heavily for its control conclusion on findings of Communist Party membership of persons who were not Union directors on or after July 28, 1955, the date on which the Attorney General filed his petition in this case. Thus after making findings as to the alleged Communist Party connections of certain persons who were members of the Union's International Executive Board on July 28, 1955, the Board immediately makes like findings as to former Executive Board members Travis and Wilson (1 J.A. 46-51). Likewise, seventeen of the International Organizers found by the Board to be Communists had left the employ of the Union before July 28, 1955 (infra, p. 47). It is incidental, but worth noting, that these facts expose the hypocrisy of the Board in holding against the Union the continuation in office of certain Union leaders (supra, p. 21). For the Board's reliance on the alleged Communist connections of former Union employees shows that it condemns the Union as much for persons whom it did not retain as for those it did retain.

5. The Report's primary evidentiary findings against the Union

are almost entirely contained in three sections. We have already discussed violations of the three-year limitation appearing in the first of these, entitled "B. Communists in the Leadership of Respondent." The other two sections are entitled "D. Issue of Communism Within the Union Itself" and "E. Policies and Programs of Respondent" (1 J.A. 3). "D" begins with events in the year 1938 (1 J.A. 80). It devotes twenty-two pages to events prior to the three-year period (1 J.A. 80-101) and eighteen to events from 1952 on (1 J.A. 102-19). Chapter "E" begins with 1939 or earlier (1 J.A. 121). Of its eleven pages of evidentiary findings (1 J.A. 121-32), about eight relate to matters prior to the three-year period and about three to events after July 28, 1952. From this mixture the Board never separates out the matters within the three-year period which support its conclusions. To the contrary, the Report's Concluding Findings show on their face that they are indiscriminately based on everything discussed in the evidentiary sections, no matter how remote (1 J.A. 142-48).

6. The Board's holding that the three-year period consisted of the three years immediately preceding the filing of the Attorney General's petition on July 28, 1955 is probably erroneous.

The Act, as we have seen, requires a determination of the present character of the organization, to be made, however, on the basis of evidence of matters falling within the preceding three years. The Act is obscure, however, as to what date the three years precede. Specifically, the question is whether the period precedes the Board's determination, or the initiation of the administrative proceeding by the filing of the Attorney General's petition, or even some point between the determination

and the initiation. Congress seems to have given no thought at all to the problem.

There may be cases where the problem is inconsequential because no substantial time elapses between the beginning and end of the administrative proceeding. In this case, however, through no fault of the Union, almost seven years elapsed between the filing of the Attorney General's petition (on July 28, 1955) and the Board's order (issued May 4, 1962). And during this time, there were changes in Union personnel and actions, including the decisions made at its annual conventions. The time lapses between the filing of the petition and various intermediate points were also of significant duration: One and a half years, or half the length of the three-year period, to the date when the taking of evidence commenced (on February 25, 1957 -- 1 J.A. 17); almost six years until the taking of evidence was concluded (on March 10, 1961 -- 1 J.A. 20).

Despite the Board's ruling that the three-year period ended on July 28, 1955, the parties freely introduced and the Board considered evidence of events subsequent to that date (1 J.A. 119-20).

Although no answer is supplied by the Act's text, the legislative history, or precedent, we believe that on principle and in the circumstances here the three-year period should consist either of the three years immediately prior to the Board's Order or the three years immediately prior to March 10, 1961, when the evidentiary record was closed. This Court has recognized that "the public interest" embodied in the Act "is in the activities of such organizations in the present and the potential future. This is not a punitive statute for past affairs."

National Council v. S.A.C.B., supra, at 379. There is no public interest in destroying the Union at this date for what may have happened in the three years prior to July 28, 1955.^{9/}

If we are correct, it follows that the Board's Order must be set aside or the case remanded because the Board employed an erroneous legal theory as to the time of the three-year period. S.E.C. v. Chenery Corp., 318 U.S. 80.

For the purpose of our later analysis of the evidence, it is necessary to adopt some three-year period. In view of the uncertainty, and in order that our treatment be comprehensive, we will hereafter treat the three-year period as beginning on July 28, 1952, the date preceding the Attorney General's petition by three years. But we will not, as the Board said it did, end the period on July 28, 1955. Instead, we will also consider the evidence of later events. This will make our "three-year period" last from July 28, 1952 to March 10, 1961, when the taking of evidence was completed. For the purposes of the control element, it is necessary to know the identity of the Union's directors at the time of the Board's proceeding (supra, p. 23). We will consider the adverse evidence against those persons who were directors on July 28, 1955, when the Attorney General's petition was filed, and at any time thereafter.

9. In any event, the circumstances make particularly unforgivable the Board's reliance on still earlier matters.

II. The Board's conclusory finding of the control component is not supported by the evidence or by evidentiary findings and rests on irrelevant and incompetent evidence and errors of law.

The findings of the Board must be supported by "the preponderance of the evidence" (Act, sec. 14(a)). This standard "means that the evidence must be substantial and moreover must preponderate. The evidence itself must have qualities of substance and also must outweigh the contrary evidence." National Council v. S.A.C.B., supra, at 388.

The Board held the control component satisfied by concluding, in language following section 3(4A), that the Union "is substantially directed, dominated, or controlled by individuals who are, or within three years have been actively engaged in, giving aid or support to the Communist Party of the United States, a Communist-action organization" (1 J.A. 148, emphasis supplied).^{10/} This conclusion derives from evidentiary findings that individuals in the leadership of the Union had certain relationships with the Communist Party. We will show that the evidentiary findings are not supported by the evidence; that in any event the Board did not, and on the evidence could not properly, make evidentiary findings essential to its conclusion; and that in reaching its conclusion the Board made numerous errors of law.

A. The evidence and findings concerning members of the International Executive Board.

1. The confusion and inadequacy of the findings.

For the purposes of the control element, it is first necessary to

10. The Board's use of the disjunctive is typical of the confusion and obscurity which, as will later appear, envelop the entire Report and in themselves require that the order be set aside or the case be remanded for the furnishing of an intelligible Report.

determine the identity of the persons who substantially direct, dominate or control the accused organization^{11/} at the time of the Board proceeding - for our purposes, those who were directors of the Union on and after July 28, 1955. The Board found (1 J.A. 33) that the Union "is substantially directed, dominated, or controlled by the individuals who constitute the International Executive Board, assisted by the staff members." It also found (id. ftn. 2) that "the executive board, assisted by the staff members - also constitute the 'effective management' of the Union for the purposes of section 13A(e)(1)."

On July 28, 1955, there were eleven members of the International Executive Board (1 J.A. 35).^{12/} In the section of the Report containing the evidentiary discussion, the Board finds that six of these Executive Board members - Dennis, Dichter, Howard, Lawrence, Pezzati, and Powers - "were shown to have been members of the Communist Party or affiliated with the Party" (1 J.A. 35), and, somewhat later, "were members of or affiliated with the Communist Party" (1 J.A. 56). In addition, the Board finds that President Clark "was shown to have an affinity for having Communists in the Union and his position as an officer has not been inconsistent with domination and control of the leadership by the Communist members" (J.A. 56). And it finds as to still another Board Member that "the fact of Salvas being a member of the board has not been inconsistent with domination and control by the Communists, whether he

11. We hereafter refer to such persons as "directors."

12. The Report excludes from consideration, as do we, the Canadian Vice-President and the Board Member for District 8 (Canada) (A.G. Ex. 108). After 1955, the International Executive Board had ten members (1 J.A. 56 ftn.).

realized it or not" (ibid.). In its Concluding Findings, the Board states: "Communist Party members together with persons who are both amenable to the Communist Party and submissive to the actions of the Party members, comprise the majority of the International Executive Board" (1 J.A. 143).

It is apparent that these findings constitute the principal support for the Board's conclusion on the control element. It is also apparent that the findings are thoroughly confused and inadequate.

(a) As seen, the Board found that six members of the International Executive Board "were shown to have been" or "were" members of or affiliated with the Communist Party. But the Board never says when the individuals were members or affiliates of the Party. Yet the findings have no conceivable relevance unless the Party membership or affiliation were within the three-year period.

(b) The Board does not say which of the condemned six are or were "members" of the Party and which are or were merely "affiliated" with it. Nor does it ever say what it means by the vague term "affiliated."^{13/} This situation also demonstrates a misapplication of section 13A(e)(1), which requires consideration of the extent to which the effective management of the organization's affairs is conducted by members of the Communist Party who know the Party's nature and purpose. Obviously it is impossible to apply this section if the Board indistinguishably mixes Party members with Party "affiliates," who are not within the

13. At a later point, the Board includes the six in a list of International Representatives "who were shown to have been members of the Communist Party" (1 J.A. 64-65). Since this contradicts the finding that the six were members or affiliates, it only adds to the confusion.

section.^{14/}

(c) Six members or affiliates obviously constitute a majority of an eleven-man Executive Board. But when we come to the Concluding Findings, we are told that the majority of the Board is composed of another grouping -- namely, the Communist Party members (whoever they are) plus "amenable and submissive" persons (1 J.A. 143), who presumably were Clark and Salvas.^{15/} The "affiliates" have disappeared, and the "members" who are left require the addition of Clark and Salvas to make a majority.

Thus we are left confused as to the Board's political categorization of the members of the Union's International Executive Board. It does seem certain, however, that a majority of the Executive Board were not genuine Communist Party members even by the Board's standards.

(d) The key issue of the control element is not, as the Board seems to have thought, whether directors of the Union were members or affiliates of the Communist Party or amenable to it. Under section 3(4A), the question is whether the directors have, within the three-year period, "been actively engaged in giving aid or support" to the Party. Party membership in itself, and still less affiliation and amenability, does not satisfy this test. If Congress had meant that

14. Other misapplications of section 13A(e)(1) will appear later.

15. It is true that there is no explanation of how Clark and Salvas graduated to the "amenable and submissive" category in the Concluding Findings whereas they have a less derogatory status in the evidentiary findings (supra, p. 28). But unless Clark and Salvas are meant, no one is. For the Report contains no characterization of the remaining three members of the Executive Board (Chavez, Larson and Wampler, A.G. Ex. 108), which could possibly warrant attaching such a description to any of them.

mere Party membership would be enough, it would have expressed such a meaning less clumsily and more clearly. Furthermore, Party membership may be inactive or nominal or devoid of political implications. Rowoldt v. Perfetto, 355 U.S. 115; Gastelum-Quinones v. Kennedy, 374 U.S. 469; Scales v. United States, 367 U.S. 203, 222-23.^{16/}

The Board, however, never made any finding that any member of the Union's International Executive Board, much less a majority, was actively engaged in giving aid or support to the Party. Thus the Board's conclusion on the control element must fall because it has no support in evidentiary findings, and because the Board erroneously equated aid to the Party with mere Party membership, affiliation and amenability.

Nor is it permissible to work backward by holding that the necessary evidentiary findings are inferentially supplied by the ultimate conclusion that the Union comes within the definition of a Communist-infiltrated organization. Such a process would violate the elementary principles that the bases for the administrative conclusion "must be clearly stated," and that the conclusion must be a rational result from adequate "findings of ultimate facts," which in turn "must appear as rational inferences from the findings of basic facts." Johnston Broadcasting Co. v. F.C.C., 85 App. D.C. 40, 46, 175 F. 2d 351, 357.

Adequate findings under the control element would have been made

16. We think, also, that the "aid or support" referred to in section 3(4A) must be aid to the Party in the advancement of the pernicious objectives attributed to it by the Act. See infra, p. 61.

only if the Board had identified the members of the International Board who actively aided the Party within the three-year period and specified the conduct which constituted such aid. Only thus would the Board have complied with its duties "to make adequate exposition of the grounds for its action" (S. Carolina Generating Co. v. F.P.C., 249 F. 2d 755, 764), to "articulate any rational connection between the facts found and the choice made" (Burlington Truck Lines v. United States, 371 U.S. 156, 168), to "state findings as to the facts" (Act, sec. 13A(f)), and to set forth "the reasons or basis" for its findings and conclusions "upon all the material issues" (sec. 8(b), Administrative Procedure Act, 5 U.S.C. 1007(b), and see Act, sec. 16). "We have repeatedly emphasized the need for clarity and completeness in the basic or essential findings on which administrative orders rest." Colorado-Wyoming Gas Co. v. F.P.C., 324 U.S. 626, 634. The findings here are neither clear nor complete.

2. The members of the International Executive Board on July 28, 1955.

The reason for the Board's obscurity and its failure to make essential findings is that the evidence does not permit the making of adequate findings adverse to the Union. To demonstrate this, we examine the Board's findings of basic facts as to those members of the Union's Executive Board on July 28, 1955 who were found to have Communist connections or leanings.^{17/}

17. We will not here include Travis and Wilson. Although the Board grouped its discussion of them with its discussion of the Intertional

(a) Raymond Dennis

The evidentiary findings adverse to Dennis appear in Paragraphs 51(a) through (g) of the Report (1 J.A. 35-38). All but one are outside of the three-year period. As to Paragraphs 51(a), (b), (c) and (e), the remoteness appears from their text. Paragraph (d) mentions no time, but the testimony dated the conversation there described as "somewhere about the middle of October of 1951" (Tr. 4876-78). (The last sentence of Paragraph 227 of the Concluding Findings (1 J.A. 144) erroneously dates the episode in 1953).

Paragraph 51(g) recites (1 J.A. 38): "Dennis is one of the Mine-Mill officials who has been active in opposing anti-Communist proposals offered at Mine-Mill conventions (see infra).\" No record annotation is supplied. But the only subsequent reference in the Report which can possibly be apposite is a finding that at a meeting of the International Executive Board in 1948, Dennis (who was then a local union officer, not a member of the Board) opposed a proposal that the Union comply with the non-Communist affidavit provision of the Taft-Hartley Act (1 J.A. 91).

The paragraphs just referred to, while containing highly irrelevant matter such as that stated in 51(g), credit testimony which could support findings that Dennis had been a member of the Communist Party in

Executive Board (1 J.A. 35, 46-50), they were not members of the Executive Board on or after July 28, 1955. They are included in our later discussion of persons who were International Representatives on or after that date.

1951 and earlier,^{18/} and that he may have resigned from the Party before December of 1951 or January of 1952.

The only finding of anything within the three-year period is a conversation reported in Paragraph 51(f) (1 J.A. 37-38):

"Around January of 1953 Gardner brought up with Dennis that Edith Lumer, an employee in the Union office in Cleveland was quite hostile to Gardner. Dennis advised Gardner that this was a problem because Edith Lumer was the wife of a National leader of the Communist Party who was then operating underground, and that the Communist Party had assigned her to the job and would be quite reluctant to remove her since she needed an obvious source of income."

It is preposterous to suppose that this conversation constitutes substantial evidence that Dennis was, at the time it occurred, a member of the Communist Party or affiliated with it.^{19/} Thus there is no evidence

18. Paragraph 51(e) (1 J.A. 37) refers to conversations in April or May of 1952. The conversations are relevant, however, only insofar as they include a purported admission by Dennis that he had attended a Communist Party meeting before he became a Board member in 1950. See also 1 J.A. 58-59, which dates the meeting in 1949.

19. This is so even if the conversation took place as stated by the Board. In fact, the Board's account is slanted to insinuate that Dennis was refusing a request by Gardner to try to get Mrs. Lumer discharged. What Gardner actually testified, however, was that he merely asked Dennis to join him in talking to Mrs. Lumer for the purpose of easing her mind of a misimpression that Gardner did not want to work with her (Tr. 4886, 4888-89). Furthermore, we question that there is any probative value in testimony given on May 18, 1960 of a conversational tidbit in January 1953, especially when it came from a witness who had been discharged from the Union's employment (1 J.A. 117), who had a bad reputation for veracity (1 J.A. 109-10 ftn.), who had an incredibly weak memory as to other matters, and who has, in various appearances, given contradictory testimony about his age, schooling, marital history, Army desertions, employment history, when he joined the Communist Party, and what was said in various conversations (Tr. 4952-61, 4977-83, 4989, 5016, 5022-24, 5035-36, 5045-58; MM Ex. 62).

that Dennis was a member of or affiliated with the Communist Party at any time during the three-year period. Still less is there evidence that at any time during that period he actively engaged in giving aid or support to the Party.

(b) Irving Dichter

Dichter first became a member of the International Executive Board in February 1955 (A.G. Ex. 108; 1 J.A. 115). The evidence credited by the Board (1 J.A. 38-40) could support a finding that Dichter was a member of the Communist Party during the three-year period. The Board's discussion also shows, however, reliance on testimony which was irrelevant because of remoteness (Paragraphs 52(a) and (b), 1 J.A. 38-39, relate to 1942 and 1943) and incompetent as hearsay (Paragraph 52(d), 1 J.A. 39, includes what Taylor told Kent). In National Council v. S.A.C.B., supra, at 386-87, this Court held that the Board may not rely on hearsay evidence of Communist Party membership.

(c) Asbury Howard

Paragraphs 53(a) through (d) (1 J.A. 40-41) credit testimony that early in 1958, (1) Howard said in conversations that he was a long-time member of the Party, had no contacts with local Party people, and paid his Party dues to the Union's office in Denver; (2) Howard met with Pettis Perry, a member of the Party's National Negro Commission, at the latter's initiative, and "reported" to Perry "on what was going on in the South and the work Howard had been doing in mass organizations, the Church, the Voter's League, and the NAACP." The nature of the "work Howard had been doing" is not described in the record.

Paragraph 53(f) relies exclusively on hearsay. Paragraph 53(g) is palpably irrelevant. (1 J.A. 42.)

The evidence thus could support a finding that Howard was a member of the Communist Party in 1958 and earlier. There is, however, no evidence which would justify a finding of the crucial fact, namely, that on or after July 28, 1952 Howard was actively engaged in giving aid or support to the Party. On the contrary, the evidence indicates an inactive, isolated membership.

(d) Alton Lawrence

Paragraphs 54(a), (b) and (c) (1 J.A. 43) credit evidence to the effect that Lawrence was a Communist Party member in 1943, went into the service, and after his return in 1945 said that the war had changed his beliefs. Paragraph 54(d) and the last sentence of 54(c) are obvious hearsay (1 J.A. 43-44).

There is thus no competent evidence of Communist Party membership or affiliation of Lawrence in the three-year period, much less of aid or support to the Party in that period.

(e) Albert Pezzati

Paragraphs 55(a) and (b) (1 J.A. 44) credit testimony that in conversations with Gardner in 1954, Pezzati expressed opinions on the Communist Party's attitude toward Taft-Hartley affidavits and Chase Powers and also described Powers as the Party "warhorse" within the Union leadership. Since there is nothing to show that Pezzati obtained the knowledge implied by the statements within Party circles or even

that the knowledge was supposed to be limited to insiders, these conversations are not substantial evidence that Pezzati was a member of the Communist Party.

Paragraphs 55(c) and (d) (1 J.A. 44-45) are irrelevant on their face. Paragraph 55(e) (1 J.A. 45) recites testimony of the witness Morales that Pezzati was a member of the Communist Party. But the same paragraph shows that the testimony was hearsay, since it is stated that Morales testified "that he based his identification of Pezzati upon having heard him discussed at Communist Party meetings." Even this is an overstatement. What Morales actually testified was that his belief that Pezzati was a Party member came "through conversations with other party members" (Tr. 3666-67), saying nothing about these being conversations at Party meetings. He also testified that he had no recollection of the conversations. Nor did he give the names of the "other party members" or explain how he knew they were such. Then when asked by counsel for the Attorney General if he had heard Pezzati discussed at Party meetings, he answered affirmatively (Tr. 3667). The nature, time, and place of the discussions and the identity of the discussants were not disclosed.

In short there is no probative evidence that Pezzati was ever a member of or affiliated with the Communist Party, much less that he ever aided or supported the Party.

(f) Chase Powers

Paragraphs 56(a) and (b) (1 J.A. 45) relate to the remote period of 1941 through 1943. We then have a ten-year lapse to 1953, in which

year it is found (Par. 56(c), 1 J.A. 45-46) that Powers told the ubiquitous Gardner that charges had been filed in the Party against Hansen, a Union International Representative, and that Gardner should isolate Hansen from the miners so that the latter could more easily be expelled from the Party. In the absence of evidence of the source of Powers' knowledge about the charges, this proves only that Powers wanted Hansen out of the Party, but not that Powers himself was in it.

The Report next credits testimony (Par. 56(d), 1 J.A. 46) that in 1958, five years later, Powers discussed with Fikes "Communist Party matters and Mine-Mill affairs," telling Fikes that "the Party and Mine-Mill did not want any Party literature in the brief cases or in the motel rooms of Mine-Mill officials lest the Federal Bureau of Investigation find it there." There being no evidence of where and how Powers acquired his purported information on the Party's desires, this statement is not probative of Party membership. For all that appears, somebody may have told Powers, just as he told Fikes.

Paragraph 56(e) (1 J.A. 46) states that "Pezzati considered Chase Powers one of the stalwarts of the Communist Party in Mine-Mill," referring to a previous finding (Par. 55(b), 1 J.A. 44) that Pezzati once said this to Gardner. This is hearsay, and what is more, opinion hearsay.

There is, therefore, no substantial evidence that Powers was a member or affiliate of the Communist Party on or after July 28, 1952. And the Board's finding that he was one or the other is further vitiated by its reliance on irrelevant evidence and hearsay. There is no evidence that Powers gave aid or support to the Party in the three-year period.

Powers was not a member of the International Executive Board at the date of the Board's order (A.G. Ex. 108A; 1 J.A. 60 ftn. 1).

We have now surveyed the basic findings as to the six members of the International Executive Board on July 28, 1955, whom the Board found to be, or perhaps to have been, "members of the Communist Party or affiliated with the Party." The survey discloses that as to four of the six (Dennis, Lawrence, Pezzati and Powers) there is no probative evidence of membership or affiliation within the three-year period. As to them and a fifth (Howard), there is also no probative evidence that they were "actively engaged in giving aid or support" to the Party within the three-year period. We have also seen that the Board erroneously relied on hearsay, on evidence which was remote from the three-year period, and on evidence which was otherwise irrelevant.

(g) Clark and Salvas

As we have seen (supra, p. 30, ftn. 15), Clark and Salvas were apparently the two members of the International Executive Board to whom the Board referred, in a Concluding Finding (Par. 225, 1 J.A. 143), as "persons who are both amenable to the Communist Party and submissive to the actions of the Party members."

To begin with, the description is a gross exaggeration of intermediate findings made concerning Clark and Salvas in the Report's evidentiary discussion. As to Clark, the original intermediate finding, accompanying the basic evidentiary findings, was merely, "that the fact of his being president has not been inconsistent with Communist Party

domination and control of the top leadership group in respondent" (1 J.A. 50). This reference became inflated, in a subsequent backward reference, to: "In addition, Clark was shown to have an affinity for having Communists in the Union and his position as an officer has not been inconsistent with domination and control of the leadership by the Communist members" (1 J.A. 56).

As to Salvas, the Board made the following intermediate finding: "However, whether he was an innocent dupe for the Party or not, the fact is that his being a member of the Executive Board was, to say the least, acceptable to the Communist Party if not instigated by the Party, and it follows that his holding a position on the Executive Board has not been inconsistent with Communist domination of respondent" (1 J.A. 55). This is a non-sequitur on its face. The Board also said that "the fact of Salvas being a member of the board has not been inconsistent with domination and control by the Communists, whether he realized it or not" (1 J.A. 56).

We think we may leave aside the Board's vapid statements that the positions of Clark and Salvas on the Executive Board were "not inconsistent" with control by the Communists and that Clark had "an affinity for having Communists in the Union." It would, however, be relevant to the control component if in fact two admittedly non-Communist directors of the Union were "submissive to the actions of the Party members" on the Executive Board.

An initial defect in any such conclusion is that, as we have seen, most of the members of the Executive Board found by the Board to be (or perhaps to have been) members (or perhaps affiliates) of the

Communist Party were, in fact, not demonstrated to be such by the evidence. This defect also in itself destroys any validity of the Board's conclusion that "the Executive Board is and for many years has been dominated and controlled by the Communist Party members on the Board" (Par. 222, 1 J.A. 142).

But in addition, there is nothing in the basic evidentiary findings or in the evidence to support a conclusion that Clark and Salvas were submissive or amenable to anybody else on the Executive Board, whether Communist or non-Communist.

The basic evidentiary findings from which the grandiose Concluding Finding on Clark derives appear at 1 J.A. 50-52. All they amount to is that Clark praised Travis and, like many other non-Communist Americans, was opposed to excluding Communists from holding office in labor unions and was against the cold war and the anti-Communist crusade which it spawned.

The Board's references to Salvas are equally inconsequential, being based exclusively on basic evidentiary findings to the effect that the Communist Party backed his election over an anti-Communist, Mason, and the hearsay that Skinner told Gardner that somebody should "ride herd" on Salvas to make sure that Party policies were properly carried out in his area (1 J.A. 53-55).

Submissiveness exists when one person follows another's dictates without regard to his own, independent judgment. To label persons as submissive to Communists merely because they are not anti-Communists reflects the malady of the John Birch Society. The Board made no finding, and the record contains no evidence, that Clark, Salvas, or any member

of the Union's Executive Board ever did anything contrary to his own judgment at the behest of another member of the Executive Board. The Board's conclusion that non-Communist members of the Executive Board were submissive to, or controlled by, the Communist members (whoever they were), is irresponsible.

3. Persons who became members of the International Executive Board after July 28, 1955.

Seven persons who had not previously been on the Executive Board became members of that body after the filing of the Attorney General's petition (A.G. Exs. 108, 108A). As to five of these -- M. C. Anderson, Verne Curtis, Alfred Petit-Clair, Barney Rask and James Buck -- even the Board is unable to find or suggest that they ever were members or affiliates of the Communist Party or engaged in giving it aid and support.

The remaining two newcomers, Maclovio Barraza and Al Skinner, were International Representatives at the time of the filing of the petition, and the Board includes them in its list of International Representatives "who were shown to have been members of the Communist Party" (1 J.A. 64-65). In typical fashion, the Board makes no finding of the date of such membership. Its supposedly annotated Report also gives no annotation to the findings.

The only testimony as to Barraza came from the witness Morales. On direct examination, Morales answered "yes," when asked if Barraza was a member of the Communist Party (Tr. 3466). But cross-examination developed that the sole source for his testimony was that one John Hellman had told him that Hellman had found out that Barraza was a

member of the Communist Party (Tr. 4036-40, 3361). From whom or how Hellman found out does not appear. In short, the Board's finding as to Barraza is based on hearsay and perhaps hearsay on hearsay, and is therefore invalid.

As to Skinner, there was testimony of attendance at several Communist Party meetings in March of 1954 and February 1955 (Tr. 3638-42, 3653-62). Assuming this testimony supports a finding of Party membership in those years, there is no finding on the truly relevant subject, whether Skinner was actively engaged in giving aid and support to the Party.

B. Staff members

The Union's staff consists of an editor of the Union paper, a research director and organizers, termed International Representatives or Regional Directors (1 J.A. 31). In reaching its conclusion on the control component, the Board relied heavily on findings that members of the Union's staff were members of the Communist Party (1 J.A. 61-71, 145).

Before examining the absence of evidentiary support for these findings, it should first be noted that even if the findings were sound they are irrelevant, and it was error for the Board to rely on them.

Under the Act, Communist Party membership or activity of an organization's employees is relevant only if the employees are directors of the organization -- in the language of section 3(4A), if they substantially direct, dominate, or control the organization; in the

language of section 13A(e)(1), if they conduct the effective management of the affairs of the organization.

The Board found that the Union "is substantially directed, dominated or controlled by the individuals who constitute the International Executive Board, assisted by the staff members." The Board also found that these same individuals constitute the "effective management" for the purposes of section 13A(e)(1). (1 J.A. 33.)

The purport of these findings is obscured by the use of the words "assisted by" preceding "the staff members." But the Board must have considered the staff members directors, or else it would not (or at least should not) have bothered to make findings about whether any of them were members of the Communist Party.

We agree that the members of the Union's International Executive Board are the Union's directors, and their role as such is supported by findings of the Report as to the powers and duties of the Executive Board (1 J.A. 30-31, 142-43). But the Board's findings as to the powers and duties of staff members negate any assumption that they are directors of the Union. These findings are:

"The staff members are appointed by the International President subject to the approval of the International Executive Board."
(1 J.A. 31.)

"The International Representatives, as the name implies, represent the International Union in contacts and dealings with the local unions; they carry out organizing activities and serve the locals by such as helping with contract negotiations and grievances."
(1 J.A. 31.)

"The servicing of a local that is performed by International representatives consists of handling grievances and arbitrations; the representative sometimes audits the books of the local; he attends meetings of the local but has no voice unless he is also

a member of the particular local; the trustees and officers of the locals frequently ask advice of the International representative and he has a great deal of influence with officers and members of the locals; the International representative participates in negotiations on behalf of locals and sees that locals follow the constitution with respect to election procedures. The representative in servicing a local works with it but has no say in the meetings unless he has a progress report to make; he has nothing to do with the operation of the local unless there is a violation of the International Constitution." (1 J.A. 135-36.)

We think that the Board treated the staff members as directors for no other reason than that it thought it could find that many of them were Communist Party members and wished to give a spurious significance to such findings.^{20/} The Board's use of the weasel wording "assisted by" is an attempt to obfuscate this impropriety.

In any event, the findings of Party membership are not adequately supported by the evidence.

The Board plays a numbers game. It says that the list of staff members on MM Ex. 156 from January 1, 1946 to October 1, 1960 includes "around 400 names," of whom "some 65 persons" were International Representatives for at least seven or eight months from 1952 through 1959 (1 J.A. 65). The Board then lists 45 names as those of "International representatives who were shown to have been members of the Communist Party (1 J.A. 64-65). The result is to make it appear that a substantial majority of Mine-Mill's staff members during the significant period (i.e., after July 28, 1952) were Communist Party members.

20. Even if the staff members were directors, the findings that some of them were Party members are inadequate to support the Board's conclusion on the control component if only because here, as also in the case of Executive Board members, the Board made no findings that the supposed Party members were actively engaged in giving aid and support to the Party. See supra, pp. 30-32.

To begin with, there are not "around 400 names" of staff members on Exhibit 156, but 508. There are not 65 of these, but 73 who were International Representatives for at least seven months from 1952 through 1959 (MM Ex. 156). But the most striking thing of all is that the Board's list of 45 found to be Communists is drawn not, as the Report implies, from the 70 who served for at least seven months from 1952, but from the entire list of 508 plus six more names which do not appear on the Exhibit at all. It should be noted, in this connection, that the 508 include persons who were on the staff for only a few days or weeks because they were employed on temporary projects, such as NLRB elections (Tr. 6073-74). It is also striking that the Board makes no finding as to when any of the 45 was a member of the Communist Party and that its annotated Report contains no annotations to the evidence supporting the findings (1 J.A. 64-65).

Of the 45 whom the Board found to be Communist Party members, the following may be eliminated because it is unnecessary to consider whether or not the findings as to them are sound.^{21/}

(a) The six names not on MM Exhibit 156 must be eliminated. It is evident that five (Emerson, Hill, McNeil, Sutherlin, Wechsler) were not listed because they were not employed by the Union during 1946 or later years,^{22/} a fact which makes their political connections thoroughly

21. This is not to imply that the findings are sound.

22. As the Board found (1 J.A. 63), MM Ex. 156 lists the staff members from January 1, 1946 to October 1, 1960. There is no evidence that the list is incomplete. The testimony shows that the Union discharged Emerson in 1943, and that Sutherlin and Wechsler were employed by the Union in 1942 and 1943, respectively (Tr. 1477-78). The testimony as to Hill and McNeil is limited to the period 1942-43 (Tr. 1400, 1403-20, 1425, 1434-35). The testimony as to Sutherlin shows Union employment in 1942 (Tr. 1477), as to Wechsler in 1943 (Tr. 1477-78).

irrelevant in view of the three-year period. The sixth name, "Bob Shriner," is the reporter's transcription error for the immediately preceding name in the Board's list, Bob Schrank.^{23/}

(b) Seventeen others^{24/} of the 45 must be eliminated because they were not employed by the Union on or after July 28, 1955. As we have seen (supra, p. 23), the three-year period relates to the time in which aid to the Communist Party was given by persons who were directors of the Union on or after July 28, 1955, and it is irrelevant whether previous directors were members or aiders of the Party.

(c) Six (Dennis, Dichter, Howard, Lawrence, Pezzati, and Powers) must be eliminated because they were members of the International Executive Board on July 28, 1955, and were subject, as such, to separate Board discussion and findings. By including them also among the International Representatives, the Board is damning the Union twice on account of the same persons. Moreover, we have already seen the inadequacy of the evidence of membership as to four of them (Dennis, Lawrence, Pezzati, Powers) and of evidence of active membership as to Howard. (Supra, pp. 33-38.)

After these eliminations, the Board's portentous list of 45 has

23. Morales was the witness who named both Schrank (Tr. 3665, 4000, 4034) and "Shriner" (Tr. 3464, 3466). Whether Schrank or Shriner is immaterial because (1) the testimony as to Shriner was a "naked assertion" of Party membership (Tr. 3466), held to be non-probative in National Council v. S.A.C.B., supra, and (2) there is no evidence that the mysterious "Shriner," if he is some one other than Schrank, was employed by the Union at any time during the three-year period.

24. Eckert, Flaherty, Flores, Gardner, Hain, Harris, Hollenbeck, Horowitz, Knott, Howard Lee, Ray Lee, McKenna, Morales, Murphy, Nichols, Piekarski, Quill. The Board's Report lists the dates of Union employment of the International Representatives found to be Communist Party members (1 J.A. 64-65), as does MM Ex. 156.

shrunk to 16 persons^{25/} who were International Representatives on or after July 28, 1955 and were found by the Board to be members of the Communist Party. Upon examining the evidence as to the 16, we find the following.

(a) The testimony of membership in the Communist Party was obvious hearsay as to Barraza (supra, pp. 42-43), Feldman (Tr. 3466, 4041), and Hansen (Tr. 4894-98, 4901-02). It was equally unprobative as to Schrank, being simply the "naked assertion" of Morales (Tr. 3466), whose penchant for hearsay accusations has already appeared. See supra, p. 42, and National Council v. S.A.C.B., supra, at 388.

(b) The finding as to Daugherty rests on testimony of Gardner (Tr. 4936-40) that in February 1955, Daugherty attended with him a meeting at a Denver hotel room, at which were also present Union employees Durkin and Skinner. The meeting discussed Union affairs. Gardner described the meeting as a Communist Party meeting, but the only basis for this description was that Durkin and Skinner had told him so beforehand. Durkin does not quote Daugherty as saying a word at this meeting, and there is no evidence that Daugherty knew or had reason to believe that the meeting was a Party meeting. Thus the evidence as to Daugherty is hearsay with respect to the crucial fact -- whether he knowingly attended a Party meeting.

(c) The testimony of Party membership as to Gately (Tr. 622, 658), Rapuano (Tr. 1475-76), and Van Camp (Tr. 4879) relates to 1946, 1941-42, and 1949, respectively. There is no evidence that any of them

25. Barraza, Dolan, Daugherty (misspelled "Dougherty" in the Report), Durkin, Feldman, Gately, Hansen, Montoya, Rapuano, Ross, Schrank, Skinner, Travis, Van Camp, Wildman, Wilson.

was a member in the three-year period. The same is true as to Travis, concerning whom the Board made separate findings (1 J.A. 46-49). According to these findings, Travis publicly and reluctantly resigned from the Communist Party in August 1949 in order to be able to sign the non-Communist affidavit of the Taft-Hartley Act. The Board cites statements of Travis contemporaneous with and subsequent to the resignation to the effect that he retained his same political beliefs and was well disposed toward the Party, but these obviously supply no reasonable basis for finding Party membership or activity after the resignation.

(d) The finding as to Wilson rests on basic findings made in Paragraph 58 (1 J.A. 49-50) concerning conversations between Wilson and Gardner and Wilson and Fikes. Paragraph 58(b) recites that Wilson told Fikes "about the Communist Party meetings at which he was present" and that he (Wilson) "was in the Party." This is a misstatement of the evidence. Fikes did not testify that Wilson said he was in the Party (Tr. 5089-92). Fikes testified that Wilson had said "that there had been party meetings, and also, in the union a discussion of his stepping down from the vice presidency" (Tr. 5090), but Fikes did not testify that Wilson said that he was present at the Party meetings.

Once the misstatements are corrected, the relevant basic findings boil down to Wilson's attendance at one Party meeting, at which he agreed to step down from his Union vice-presidency in favor of a Negro candidate, plus evidence that Wilson knew that the Party considered him "a bad security risk." There was no evidence that the Party meeting was restricted to Party members. While this evidence shows cooperation with the Party, it does not rise above creating a suspicion of Party membership.

Cf. Bridges v. United States, 199 F. 2d 811, 836, rev'd on other grounds, 346 U.S. 209 (attendance at Party meeting does not establish Party membership).

We are thus left with six International Representatives (out of 46 employed by the Union on July 28, 1955) as to whom the evidence may justify a finding of Party membership in the three-year period. The Board's list of 45 is a canard. And even as to those six, or for that matter as to any of the 45, the Board never made a finding of the critical point -- namely, that any of them was actively engaged in giving aid and support to the Party. We think that the following facts are also noteworthy. (a) The Union employment of two of the six ended before the Recommended Decision (dated December 27, 1961), Dolan's having terminated October 31, 1959, and Durkin's December 31, 1955. (b) The evidence of Communist Party membership of Montoya relates exclusively to 1950 and 1953 (Par. 78, 1 J.A. 66), times which were prior to his employment by the Union. (1 J.A. 64.)

C. Clerical Employees

Even the Board was unable to find or insinuate that the Union's clerical employees are directors of the Union. It is, therefore, clearly irrelevant whether any of those employees were members or actives of the Communist Party. Nevertheless, the Board made and relied on findings of Party membership of, and attendance at Party meetings by, various Union clerical employees (1 J.A. 71-72). The Board's emphasis on these irrelevancies is shown by the fact that one of its Concluding Findings (Par. 229, 1 J.A. 145-46) refers back to one

of the basic findings on clerical employees as being "illustrative" of "revealing" facts.

In Paragraph 87 (1 J.A. 71-72), the Board recites that the Union "clerical employees who were shown to have been members of the Party were:". The colon is followed by a listing and description of six persons. But the listing itself acknowledges that one of these (Edith Lumer) was not shown to be a Party member. The Board's explanation for including her on its list is illuminating of the irresponsibility and bias which pervade the Report. The Board states (1 J.A. 72):

"Edith Lumer, an office employee during 1951-55, was not shown to be a member of the Party but was the wife of a National Officer of the Communist Party and had been assigned her job in Mine-Mill by the Party."

The Board fails to mention that the evidence that Mrs. Lumer had so been assigned her job (the testimony, in fact, had a different nuance -- it was that she had been assigned to the job, not vice-versa), was exclusively hearsay (Tr. 4888).

That the finding as to another, Riskin, is equally ridiculous also appears from the text of the Report (1 J.A. 72):

"Ben Riskin, a Mine-Mill research director in the early 1940's, was not shown to have attended Communist Party meetings but it was established that he was forced out of the Union on charges of being a Communist when the anti-Communist faction had a certain amount of power."

That the Board's finding as to a third, Grace Peterson, is utterly remote appears from the Report's own showing (1 J.A. 72) that she was employed by the Union only in the 1940's and that the evidence of Party membership was limited to the 1940's.

Deducting the names of these three, there are left three clerical

employees found to be Party members out of 178 employed between 1946 and 1960 (MM Ex. 156, pp. 12-17).

D. The Board's misapplication of the scienter requirement of section 13A(e)(1).

Section 13A(e)(1) directs the Board to consider to what extent the effective management of the organization's affairs is conducted by individuals who have been, within the three-year period, members, agents or representatives of the Communist Party "with knowledge of the nature and purpose thereof."

The Recommended Decision at its outset makes a finding on the knowledge requirement in a footnote in the text, stating (1 J.A. 33 fn. 1):

"With respect to the provision in the evidentiary consideration of section 13(A)(e)(1), as applied to this proceeding, that the individuals involved have acted 'with knowledge of the nature and purpose' of the Communist Party, the undenied facts as to their statements, declarations, and conduct, as are set forth passim, require the conclusion that their Communist orientations could not have existed with innocence of the nature and purposes thereof."

By reference to the text of section 13A(e)(1), the "individuals involved" are presumably meant to be all Communist Party members, agents or representatives who have, within the three-year period, conducted the effective management of the affairs of the Union. This construction is confirmed by the full Board's interpretation of the quoted passage (1 J.A. 13).

As we have seen (supra, p. 44), the Board considered the Union's "effective management" to consist of both the Executive Board members and the staff ~~employees~~. The Board nowhere finds that any of these was a Communist Party "agent or representative," but it does find that many of them were members of the Party. The Board's scienter finding

apparently embraces, therefore, all Executive Board members and staff employees whom it found to be Party members. We have already seen, however, that the findings of Party membership were often without evidentiary support.

The Board violated its duty of making adequate and intelligible evidentiary findings (see supra, p. 32) in finding that scienter existed en masse on the basis of unspecified "statements, declarations and conduct . . . set forth passim" in the lengthy and turgid Report. It was the obligation of the Board, in applying section 13A(e)(1), to state as to each individual found to be a Party member the particular evidence from which it concluded that he did or did not have the guilty knowledge required by the section.

By not doing so, the Board attempted to conceal the irresponsible nature of its scienter finding. The findings of Party membership were, as we have seen, frequently based on nothing more than hearsay or a bare admission of membership or attendance at meetings the subject matter of which was innocuous or not disclosed. And this same evidence was all there was, in the same cases, to indicate what was the individuals' knowledge of the Communist Party. Yet on such unilluminating evidence, the individuals concerned are indiscriminately included in the Board's wholesale finding of the presence of guilty knowledge.

The Board never defined "the nature and purpose" of the Communist Party which must be known before a Party member comes within section 13A(e)(1). That "nature and purpose" is delineated in section 2 of the Act, which, in substance, describes the Party as an agent of the Soviet Union which seeks to overthrow our government, by illicit means if

necessary, and to replace it by a Communist totalitarian government under Soviet control. See Communist Party v. S.A.C.B., 367 U.S. 1, 55. There is nothing in the Board's Report or the record to support a finding that anybody in the Union knew that the Communist Party meets this description. Therefore the Board's mass finding of scienter has no support even as to any single individual, and the Board obviously applied an erroneous standard if, as seems unlikely, it applied any at all.

E. Miscellaneous findings.

The Board also made other findings on which it seems to have relied heavily in reaching its conclusion on the control component. The relevancy of these findings is not apparent to us, nor does the Board explain it. In any event, these findings too are gross distortions of the record and examples of the Board's disregard of the three-year period.

1. Filling of vacancies

In Paragraph 226 of its Concluding Findings (1 J.A. 143), the Board states:

"To a quite significant extent the powers to fill vacancies has been exercised in the appointment of members of the Communist Party to positions on the governing board, and the board has hired an impressively substantial number of Communist Party members to staff positions in the Union."

Not much stock can be put in this conclusion if only because of the Board's demonstrated proclivity for making baseless findings of Communist Party membership.

After July 28, 1952, five persons were appointed by the Executive Board to fill vacancies which arose between conventions (A.G. Exs. 108,

108A). In 1954, Salvas, who the Board admits was never a Communist Party member (1 J.A. 55), succeeded Mason, who had once been a Party member (1 J.A. 52). In 1955, Pezzati, as to whom there is no evidence that he had ever been a Communist (supra, p. 37), replaced Travis, found by the Board to be a Communist (1 J.A. 46-48). Also in 1955, Dichter, found by the Board to be a Communist (supra, p. 35), filled the vacancy of Executive Board member caused when Pezzati became Secretary-Treasurer.^{26/} In 1959, Anderson, whom the Board did not find to be a Communist, replaced Lawrence, who was found to be one (supra, p. 36). In 1960, Curtis, not found to be a Communist, replaced Skinner, who was so found (supra, p. 43), when Skinner succeeded Larson as a vice-president.

There were at least 25 permanent appointments (i.e. for six months or longer) to the staff made after July 28, 1952 (MM Ex. 156). The Board found (1 J.A. 64-65) that three of these appointees (Durkin, Montoya, Ross) were Communists.

In no case was there any evidence that Party membership, if it existed, was a reason for or a factor in the appointments, or that any one on the Executive Board knew whether or not the appointee was a Party member. The record shows, to the contrary, that persons appointed to the staff or promoted were not subjected to inquisitions as to their politics (1 J.A. 135; Tr. 6461).

The Board's reliance on the filling of vacancies is obviously mis-

26. The Board erroneously states at one point (1 J.A. 59) that in 1959 Dichter was "appointed" secretary-treasurer "at the time of Pezzati's resignation." The facts are that Pezzati's term expired in 1959, and Dichter was elected secretary-treasurer by a referendum of the Union's members following convention nomination. MM Ex. 131, pp. 23, 97-101.

placed.

2. Meetings at homes

In paragraph 229 of its Concluding Findings, the Board states (1 J.A. 146) that "Communist Party meetings have been held at the homes of various of the Mine-Mill members." The evidentiary findings on attendance of staff members at Party meetings (Pars. 78-85, 1 J.A. 66-71) do not, however, mention a single Party meeting held during the three-year period at the home of a staff member.

3. Discussions of Union affairs with Party officials.

The Board found that Union officials have discussed affairs of the Union with functionaries of the Communist Party (Par. 203, 1 J.A. 132; Par. 226, 1 J.A. 143).

After combing through the evidentiary findings, we can discover only one instance in which it was found that a member of the Union's Executive Board met with a Communist Party official during the three-year period.^{27/} The Report finds (Pars. 54(c)-(e), 1 J.A. 41-42) that early in 1958, Asbury Howard met with Pettis Perry, a member of the National Negro Commission of the Communist Party, at the request of Perry communicated through Fikes. It is found that at this meeting Howard "reported to Pettis Perry on what was going on in the South and the work Howard had been doing in mass organizations, the Church, the

27. As previously noted (supra, p. 33), the last sentence of Paragraph 227 (1 J.A. 144) erroneously attributes a 1953 date to a discussion which, according to the testimony, was held in October 1951.

Voter's League, and the NAACP" (1 J.A. 42).

Thus there was only one occasion, and the discussion then was not on affairs of the Union.

Meetings of staff members with Communist officials are irrelevant, since the staff members were not directors of the Union. In any event, the evidentiary findings on any such meetings in the three-year period which discussed Union affairs are slim indeed. They involve two meetings which Dichter, then an International Representative, attended in Connecticut in 1953 and 1954, but at which, so far as appears, affairs of the Union were not discussed (1 J.A. 39, 68, 145), and attendance at Communist Party meetings in Montana by some staff members whom the Board found to be members of a Party group in that state which included the Party organizer for Montana and northern Idaho (1 J.A. 66-69).

4. Discharges; refusal to bar Communists from Union office.

In Paragraph 230 of the Concluding Findings the Board states (1 J.A. 146):

"Various persons who held functionary positions in respondent have been discharged after taking anti-Communist positions. Persons who were members of the Communist Party and were expelled from the Party were thereafter discharged from the Union."

The statement is obviously without significance, in view of the careful omission to state that any employee was discharged because he took anti-Communist positions or was expelled from the Party. In any event, in combing through the Report, we can find reference to only one discharge of a Union employee during the three-year period. The Board finds that Gardner was discharged soon after being expelled from the Communist Party (1 J.A. 40). But it is unable to make any resolution

of what it calls conflicting testimony on "who fired Gardner and why" (1 J.A. 117).

The Board also finds that the Union has lost membership and was expelled from the CIO because it refused to amend its constitution so as to bar Communists from office in the Union. This finding, plus the unsupported and irrelevant finding on discharges, cause the Board to conclude that the "situation within" the Union "is one where there is an affinity for the Communist Party." (Par. 230, 1 J.A. 146)

This is another John Birch Society position. To reasonable men, the Union's fidelity to the principle that its members have an unrestricted right to select their officers shows an affinity for democracy, not for the Communist Party.

We believe that we have, except for one subject reserved for later discussion,^{28/} now examined every item of possible substance from which the Board derived, or might have derived, its conclusion on the control component. We think that the examination has disclosed that the conclusion is unsubstantiated, that the Board made numerous errors of law, and that its Report is a thoroughly unreliable and deceptive document.

III. The Board's conclusory finding of the means component is not supported by the evidence or by evidentiary findings and rests on irrelevant and incompetent evidence and errors of law.

A. The conclusion on the means component is vitiated by the fact that it and the conclusion under section 13A(e)(3) are not intelligibly connected to evidentiary findings.

28. For the Board's erroneous reliance on nondeviation, see infra, pp. 74-77.

The Board reached the ultimate conclusion that the means component of section 3(4A) is satisfied on the grounds that the Union "is serving or within three years has served, as a means for the giving of aid or support to such Communist Party."

Analysis and review of this conclusion are frustrated by the fact that the Board fails to identify the evidentiary findings, basic or intermediate, and the reasoning from which the conclusion derives. On this account alone the Board's order must be set aside or remanded for the supplying of an intelligible exposition of the bases for the Board's ultimate conclusion. See authorities discussed supra, p. 32.

Although similar difficulties existed with regard to the Board's conclusion on the control component, the problem there was not so serious because the Board's conclusion on control presumably derived, for the most part, from the section of the Recommended Decision's Findings of Fact entitled "B. Communists in the Leadership of Respondent" (1 J.A. 32-72). But no section in the Findings of Fact is so labelled as to indicate it to be a likely source for the conclusion on the means component. The sections containing animadversions against the Union other than "B" are entitled: "C. The Communist Party of the United States" (1 J.A. 72-80), "D. Issue of Communism Within the Union Itself" (1 J.A. 80-120), and "E. Policies and Programs of Respondent" (1 J.A. 120-32). The text of those sections consists of what seems to us to be a mass of irrelevant material. Our ingenuity is not equal to the task of finding what the Board may have considered grains of gold in this heap of dross. And while we think the narrative is highly tendentious and inaccurate, we see no point in refuting items which have no visible importance to the

result. On the other hand, if the Board considered that everything in the three sections was important, then the order should be set aside on the ground that the Board obviously relied on great quantities of non-probative matters.

Nor is the situation remedied by the existence of Concluding Findings (1 J.A. 142-48) preceding the ultimate conclusion. Most of the Concluding Findings appear to relate only to the control element. We do not know that the others are meant to be expository of the means conclusion, but if they are, they are themselves conclusory and fail adequately to identify the evidentiary findings from which they stem.

A similar situation exists with the Board's conclusionary findings under section 13A(e)(3) (Par. 234, J.A. 147; see infra, p. 65). Thereby the Board violated not only elementary requirements of administrative law, but section 13A(e) itself. The section requires the Board to consider specified subjects in determining whether any organization is a Communist-infiltrated organization. The Board cannot be said to have considered one of these subjects if it did not go through the process of separating and identifying the evidence believed to relate to the subject.

Because of this unintelligibility of the Board's Report, we cannot proceed in the usual fashion by examining the basis for the evidentiary findings from which the Board's conclusions are known to derive. In what follows, we shall, therefore, show that the evidence does not support a conclusion adverse to the Union on the means component. We shall also rebut various findings and conclusions on which, by our speculation, the Board may have relied.

B. The evidence does not support the conclusion on the means component, and insofar as it is possible to conjecture the bases for the Board's conclusion, they are irrelevant and unsupported.

1. "Aid or support" means aid promoting the illicit objectives attributed by the Act to the Communist Party. There is no evidence that the Union supplied such aid.

Section 3(4A) refers to the giving of aid or support to a Communist-action organization, a Communist foreign government, or the world Communist movement. It does not say what kind of aid or support. We think the section must be construed to mean aid or support which forwards the illicit objectives attributed by section 2 of the Act to the world Communist movement, the foreign government which is supposed to control it, and Communist-action organizations. These objectives are the overthrow of the government by any means necessary, including force and violence, and the substitution of a Communist totalitarian dictatorship which will be subservient to the Soviet Union. Communist Party v. S.A.C.B., 367 U.S. 1, 55.

The limiting construction suggested is necessary for constitutional purposes. The Supreme Court sustained the Act in the Communist Party case on the ground that the need to protect the national security from the dangerous activities described in section 2 out-balanced the First Amendment interests which the Act adversely affected (at 88-96). The Court approved the registration requirements of the Act because they attached "to the incidents of foreign domination and of operation to advance the objectives of the world Communist movement" (at 90) -- these objectives being, as we have seen, sinister ones.

Aid to the Communist Party which does not forward its alleged evil objectives obviously does not come within the rationale on which the Act was sustained. Since such aid does not imperil the national security, there is no need to suppress it, much less a need which out-balances the First Amendment interests of the accused organization. Suppose, for example, a labor union on the recommendation of its leaders contributes financially to litigation of the Communist Party against laws believed to be unconstitutional. If "aid or support" in section 3(4A) means any kind of aid or support, the hypothetical union obviously meets the section's definition. We cannot believe, however, that the government has the right or the need to destroy a labor union because it acts in aid of constitutional rights, including the right of the Party to defend itself in court.

Needless to say, there is nothing in the record to indicate that the Union has served as a means for giving the Communist Party aid or support for achieving illicit objectives. There is no evidence and the Report cites none, that the Union was a vehicle for fomenting insurrection or disseminating doctrine advocating violent revolution and the establishment of a totalitarian state under Soviet control.

2. There is no evidence of aid or support under any construction.

If aid or support means any kind of aid or support to the Communist Party, the evidence still fails to show it.

(a) Tangible aid - Section 13A(e)(4).

We know of no evidence that at any time in the three-year period (or

before then, for that matter) the Union contributed anything tangible to the Communist Party or performed services for the Party, such as distributing its literature or recruiting members for it. The conclusive demonstration that there is no such evidence is supplied by the Board's treatment of section 13A(e)(4).

That section requires the Board to consider the extent, if any, that an accused organization "within three years has received from, or furnished to, or for the use of any such Communist organization, government, or movement any funds or other material assistance." The Board does not even make a conclusory finding in or near the language of this section. Instead, it attempts to cover over the absence of any evidence under the section by parenthetically citing section 13A(e)(4) at the end of the paragraph (Par. 234, 1 J.A. 147) which makes a finding adverse to the Union under section 13A(e)(3). Thus the Board erred in not giving the Union a credit for the absence of evidence satisfying 13A(e)(4).

Since even the Board did not find that the Union furnished to (or received from) the Communist Party tangible aid or support, presumably the Board considered the means component to be satisfied because the Union served as vehicle for giving the Party some kind of intangible aid or support during the three-year period. The whole concept of determining whether an organization gives the Communist Party intangible aid seems to us not only vague, but to verge on the unreal and the ridiculous. Nevertheless, we will, in what follows, search the Board's Report for any clues to the Board's position. We will also examine the Board's findings under section 13A(e) which have not already been covered.^{29/}

29. The finding under section 13A(e)(1) was examined in our discussion of the control component, to which it obviously relates.

(b) Formulation of policies - Section 13A(e)(2)

Section 13A(e)(2) directs the Board to consider to what extent, if any, the policies of an accused organization "are, or within three years have been, formulated and carried out pursuant to the direction or advice of any member, agent or representative of" the Communist Party. The Board found under this section (Par. 233, 1 J.A. 147):

"To a quite substantial extent the policies of respondent are and for many years have been formulated and carried out by or on the advice of the Communist Party members holding leadership positions in respondent and by those leaders who, while not shown by the evidence to be members of the Party, were shown to be amenable to the Communist Party and to cooperate closely with the Party member-officials."

In other words, the Union's policies are to a "quite substantial extent" formulated and carried out by its directors, and they are either members of the Party or amenable to it. This finding presupposes the validity of the Board's earlier findings concerning Party membership, affiliation and amenability of the Union's directors. Since, as we have seen, these earlier findings are not supported by the evidence, neither is this one.

In addition, the Board's finding under section 13A(e)(2) shows that it misconstrued the section. The Board found the section satisfied by the policy role of the Union's duly chosen directors. But the section's reference to "any member, agent or representative" of the Communist Party means, we think, Party members, agents or representatives who are outside of the organization's official directorate. It is, after all, the elementary duty of an organization's directors to direct and advise on the formulation and execution of the organization's policies. No

sinister significance can be attached, therefore, to the fact that a director performs this duty, no matter what his politics may be.

Moreover, the section does not authorize the Board to consider, as it did, the participation in policy matters of persons who are merely amenable to the Party, and not its members, agents or representatives. Still less does the section contemplate anything so absurd as condemning the Union because non-Communist directors fulfill their duty of cooperating with fellow directors, even if the latter may be Communists.

(c) Promotion of Communist objectives - Section 13A(e)(3)

The Board found this section satisfied, as follows (Par. 234, 1 J.A. 147):

"The Union is being and for many years has been used to a significant extent to further and promote the objectives of the Communist Party, particularly with respect to the Party objectives as to the trade union movement. This was evidenced, among other substantial matters, by the fact that top leaders and important officials have met with officials of the Communist Party, who were not members of respondent, for the purpose of planning and discussing respondent's affairs, and by the success of the leadership of the Union in keeping the Union oriented along Communist lines."

To begin with, this passage is intolerably obscure because of the Board's failure to explain, either in it or anywhere else, (a) what Party objectives are referred to besides those respecting the trade union movement; (b) what are the "other substantial matters" of evidence referred to in the second sentence; (c) what is meant by "orientation along Communist lines."

Insofar as the Board is somewhat specific, or we can hazard a guess at what it means, the finding is clearly erroneous.

(1) As the principal support for the finding, the Board says that Union leaders have met with Communist officials who were not members of the Union for the purpose of planning and discussing the Union's affairs. We have already examined the evidence in support of this finding and have demonstrated that it is inadequate (supra, p. 56).

But even if such meetings had been held, that still would not show that the Union was being used to promote the objectives of the Party. In order to determine whether such was the case, one would have to know what, if anything, was agreed on at the meetings and whether the agreement was effectuated. Otherwise, for all that appears, what was agreed on was only designed to promote objectives of the Union and not of the Party. The Board does not enlighten us on these matters, perhaps because of the absence of such meetings.

(2) The Board does seem to define "the Party objectives as to the trade union movement." It says (Par. 96, 1 J.A. 76):

"The evidence of record shows that the Communist Party has sought to gain control of labor unions through recruiting members out of them; getting Party material to them; and having Party members active in the unions and working very assiduously on measures of interest to the general union membership and in the course of that raise the education of the workers and show them it is not enough to get higher wages, show them who their enemy is and how to overcome the enemy and establish a Communist system." ^{30/}

There is no evidence, however, that the Union promoted these Party objectives. There is nothing in the record that the Union or its leaders recruited Union members into the Party or distributed Party material. The

30. The finding is based solely on the "expert testimony" of Barbara Hartle (Tr. 5267-68, 5236), an ex-Communist who was never connected with the Union. Hartle's ability to know of the Communist Party's policies ended in August 1950 (Tr. 5277-80). If only for that reason alone, we think that the finding lacks evidentiary support.

Union and its leaders did work "very assiduously on matters of interest to the general union membership," but there is no evidence that in thus discharging their elementary responsibility they had the purpose or achieved the result of showing the workers "who their enemy is and how to overcome the enemy and establish a Communist system."

In any event, it seems to us offensive to common sense and the Constitution that the government should condemn the Union because of the supposed motivation of its officers in working hard for the interests of the Union's members. By the Board's approach, labor unions can be assured of the right of survival only if their leaders neglect their responsibilities.

(3) In Paragraph 97 (1 J.A. 76) the Board tries to connect the Union with its finding in Paragraph 96 (1 J.A. 76) on the Party objectives in the trade union movement. The Board states:

"The foregoing finding must be considered in connection with the continuing practice, found infra, of the International officers of Mine-Mill in advancing and having Mine-Mill adopt policies and take positions on international political affairs and positions in opposition to the laws of the United States, which laws have as their purpose to prevent world Communism from achieving its aims in the United States. The continued advancing by the Mine-Mill officers of the position that big business or the capitalists in the United States are the enemies of the working class is in line with the aims of the Communist Party as found above."

The second sentence in this passage is not annotated to the record in the Board's annotated Report, and we have been unable to detect any evidence or evidentiary finding to support it.^{31/} In any event, it is

31. Elsewhere the Board states, also without record annotation, that the Union's leaders have made persistent efforts "to convince the membership of the Union that Wall Street and the United States Government are their enemies" (Par. 187, 1 J.A. 126). At one point, the Board does make an annotated finding that at the Union's 1956 convention, Asbury Howard "advanced the view that the real enemies of the working class are

puerile to suggest that persons are promoting the objectives of the Communist Party if they assert that big business or Wall Street or the capitalists are the enemies of the working class. That view has been expressed as a commonplace not only by Communists, but also by Socialists, Anarchists, Trotskyists, Syndicalists, radicals of other descriptions, and countless trade union leaders, including many identified with labor's right wing.

(4) The first sentence of Paragraph 97 (1 J.A. 76), which is also echoed in Paragraph 231 (1 J.A. 146), advances the theory that the Union has been a vehicle for promoting the objectives of the Communist Party because its membership has been induced by the Union's leaders to adopt resolutions critical of certain aspects of American foreign policy and of anti-Communist legislation. We suspect, though there is no way to be sure, that this theory is also what the Board means when it talks about the Union's "Communist orientation." Nor do we perceive any connection between this sentence and the Party objectives described in Paragraph 96.

Most of the Board's discussion of resolutions (1 J.A. 121-31) deals with resolutions which were adopted before the Union's 1952 convention and therefore do not fall within the three-year period. While we consider the Board's pre-1952 discussion to be highly distorted and jaundiced, we will not examine it because space limitations preclude our dealing with findings which are irrelevant because of their remoteness from the three-year period.

those that are 'passing the right-to-work laws, the Taft-Hartley laws, the Brownell-Butler laws'" Par. 199, 1 J.A. 130-31). There thus seems to be some confusion as to the identity of the enemies of the working class.

Limiting ourselves to resolutions adopted within the three-year period, those to which the Board apparently refers were resolutions calling for a cease-fire in Korea (Par. 134, 1 J.A. 102), criticizing the embargo on exports to Eastern European countries and to China (Par. 142, 1 J.A. 106-07), and condemning the Taft-Hartley Act, the Smith Act, the Internal Security (McCarran) Act, the Communist Control (Brownell-Butler) Act, the House Committee on Un-American Activities, and the Internal Security Subcommittee (Pars. 134, 167, 168, 1 J.A. 102, 118).^{32/}

The effect of the Board's holding is to make it dangerous for labor unions to take positions on foreign affairs and legislation unless they conform to the views of the Board. Such a holding is clearly contrary to the First Amendment and has nothing to do with the Act's ostensible purpose to protect the national security.

In any event, it is poppycock to regard the resolutions adopted by the Union in the three-year period as constituting aid or support to the Communist Party. The views have been advanced by many non-Communists, who considered that in doing so they were aiding and supporting the best interests of the nation. President Eisenhower supported, and eventually negotiated, a cease-fire in Korea. The Taft-Hartley Act was denounced by virtually all of organized labor (1 J.A. 90 ftn.). The Smith Act,

32. The Board also refers to speeches and reports made at Union conventions. Insofar as these advanced positions which were not adopted by the Union, we do not see their relevancy to the subject of whether the Union has served as a means for giving aid to the Party. The Act surely does not require unions to muzzle the delegates elected to their conventions, nor can unions be charged with responsibility for everything said at convention.

the Internal Security Act and the Congressional anti-Communist investigating committees have been condemned by Justices of the Supreme Court.^{33/} President Truman vetoed the bill which became the Internal Security Act in a stinging message (H. R. Doc. 708, 81st Cong., 2d Sess.), and the legislation was also opposed by, among others, the A. F. of L., the C. I. O., the Brotherhood of Railroad Trainmen, the National Farmers Union, numerous church, social action and civil liberties organizations, many distinguished individuals, and more than twenty major newspapers.^{34/}

(d) Brainwashing.

So far as we can discern it, the Board's theory on the means component is this: The directors of the Union -- most of whom are, according to the Board, either Communist Party members or submissive to the Party members -- are using the Union to give aid and support to the Communist Party by having the Union adopt Communist positions ("keeping the Union orientated along Communist lines") and by indoctrinating the Union members into the intricacies of the class struggle (educating them to recognize the "enemies of the working class").

A fundamental flaw in this theory is that the Union is democratically run. The Union members have elected and re-elected the offending dir-

33. See, e.g., Dennis v. United States, 341 U.S. 494, 579-91; Communist Party v. S.A.C.B., 367 U.S. 1, 115-202; Barenblatt v. United States, 360 U.S. 109, 134-62; Watkins v. United States, 354 U.S. 178.

34. Hearings before House Committee on Un-American Activities, 81st Cong., 2d Sess., on H. R. 3903 and 7595; Hearings before Senate Committee on the Judiciary, 80th Cong., 2d Sess., on H. R. 5852; Cong. Rec., 81st Cong., 2d Sess., pp. A6135, A6220-21, A6724-26, A7397, A7266, A7275-81.

ectors, and the Union members have adopted the offending positions of the Union. The Union is not one of those labor organizations in which the rank and file are effectively deprived of a dispositive voice by the organization's structure and procedures or by intimidation or other means. On the contrary, the Union is the foremost example of union democracy in the labor movement (supra, p. 5), and, as even the Board's Report shows, its members are highly articulate and even argumentative (1 J.A. 83-87, 91-92, 94, 100-02, 105-07).

Nor can it be claimed that the Union's membership has allowed the situation envisaged by the Board out of ignorance. On the contrary, the Report itself shows (1 J.A. 80-106, 117) that for years the Union and its leaders have been the target of accusations of Communism and that the accusations have been debated by the membership.

If, therefore, the Board is right, there can be only one explanation for the acquiescence of the membership in allowing their Union to be used as a means to aid and support the Communist Party. Either the members themselves are pro-Communist or they are stupid.

The Board does not find that the thousands of workers who constitute the Union's membership are pro-Communist. It does find that they are stupid. Its thesis is as follows:

(a) The Union and its leaders have achieved gains in wages, hours and working conditions which have met with the satisfaction and even enthusiasm of the members.

(b) As a result, the officers of the Union, a majority of whom the Board finds to be Communist or pro-Communist, have gained the confidence and respect of the members.

(c) In consequence, the members follow and support these Communist leaders with "blind faith," automatically endorsing everything the latter propose. This makes the Union have a "Communist orientation," and gives the Communist Party "a dependable foothold in the labor movement," thereby affording to the Party aid and support that is "real, substantial and significant." (Pars. 236, 98, 99, 224, J.A. 148, 76-77, 143.)

We leave to one side the fact that this proposition is vitiated ab initio by the Board's errors in determining that Union officers are Communists or submissive to Communists. More fundamentally, it seems to us impossible that an order can be sustained where it rests on a probing of the mental state of thousands of American workers and a determination that they have been brainwashed. We think the administrative process is not equal to the task. We also think that the Board's slander of the Union's membership is unconscionable.

It seems preposterous, but the Board solemnly made evidentiary findings to support its conclusion on the psychological attitude of the Union's members (Par. 99, 1 J.A. 77-79). The substance of these findings is as ludicrous as the fact that they were made. Out of the 125 Union witnesses (1 J.A. 18), the Board points to the following testimony of five to prove that the majority of the membership has been brainwashed.

(a) Three witnesses (Buckner, Curtis, Wenham) testified that they had no objection to Communists holding offices in labor unions. A fourth (Piano) also showed unconcern; though he was aware that accusations of Communism had been made against the Union and some of its

officers, he was gratified that his local of zinc workers has remained with the Union because he believed that the Union was in the best position to deal with zinc problems. (1 J.A. 78-79.)

This testimony shows not that these four witnesses have been brain-washed, but that they have retained their independence of mind despite the cold-war pressures to which the intellects of many others have succumbed. Even the Board might have been able to perceive this fact if it had paid some attention to Curtis' testimony on the reason for his attitude, instead of suppressing it. On cross-examination, Curtis testified (Tr. 8412-16):

"Q. So I take it that you have no objection, personally, to a member of the Communist Party holding office in labor unions? A. I sure do not.

* * * *

"A. I have no objections to any person holding any kind of a union office, regardless of his religious or political belief.

* * * *

"Q. . . . I take it that you, yourself, are not and never have been a member of the Communist Party, is that right? A. I will answer that question, but I would like to make a couple of pre-facing remarks.

"Q. All right, go ahead. A. To start with, the question is most repulsive to me, and the reason why it is most repulsive to me is because my progenitors left tracks in the snow from the State of Ohio down to the State of Missouri, back to the State of Illinois, and across the plains to the State of Utah because they wanted to believe and worship God as they saw fit.

* * * *

"Q. I take it you are speaking of the Mormons? A. No, I am speaking of the Latter Day Saints.

"Q. . . . Go ahead. A. When I went to public school down in the State of Arizona, us kids, because we were members of the LDS church lots of times had a lot of fist fights, and my father and his dad were run off the border of Mexico on account of that. One time I got up in the morning, and I recall there was a long smoke haze over the valley. I went to school and found

that the school house was burned down. They said, 'The Wobblies burned down the school house, let's go get them,' so the guys got on their horses and tramped the brush for a week at a time looking for those guys. Come to find out, there was a farmer there in the valley who had twelve children in that school. It was a very rickety building, and he was afraid it was going to burn up or cave in on his kids, and he set the fire, but the supervisors refused to build a new school house. Just because people have an inherent right to believe in something, I don't think they should be persecuted for it. I am not a member of the Communist Party. I have never been, but I detest the question."

(b) The other findings made by the Board as demonstrating brainwashing are manifestly trivia. Buckner, when on a convention committee, once went along with a recommendation favored by the committee chairman, although Buckner personally did not favor the recommendation (Par. 99(b), 1 J.A. 78). Another witness once took the word of Dennis that the McCarran Immigration Act, the Internal Security Act, and the Butler-Brownell (Communist Control) Act would not help labor; he also testified that if Dennis or Van Camp told him a law was bad for labor, he would take their word for it (Par. 99(d), 1 J.A. 78). A delegate to Union conventions in 1957 and 1959 testified that he did not pay much attention to what was going on and could not make heads or tails out of what was happening; he also testified that he did not know the Communist position on things, and it would not make any difference to him if he did know it (Par. 99(f), 1 J.A. 79).

e. Non-deviation.

The Board found that the Union's policy positions have never deviated from the positions taken by the Communist Party (Par. 231, 1 J.A. 146). Before then it stated that the "merits" of the positions taken by the

Union "are of no concern in this proceeding. The relevancy of the policies, positions and programs taken and advanced by respondent is limited to whether they evidence domination by the Communist Party and support of the Communist Party. . . ." (Par. 200, 1 J.A. 131). This leads us to surmise that the Board relied on its non-deviation finding in support of its conclusions on both the control component and the means component. This reliance was erroneous.

The Act does not contemplate that non-deviation shall be a test of whether an organization is a Communist-infiltrated organization. Section 13A(e), which contains guidelines for determining whether an organization is infiltrated, has no non-deviation provision, in contrast to the guideline sections relating to Communist-action and Communist-front organizations. (See secs. 13(e)(2) and 13(f)(4).) This distinction arises from differences in the definitions of the three kinds of organizations.

A Communist-action organization is controlled by a foreign government or organization (sec. 3(3)). A Communist-front organization is controlled by a Communist-action organization (sec. 3(4)). But a Communist-infiltrated organization is controlled not by another organization, but by individuals who have given aid or support to the Communist Party (sec. 3(4A)). This Court has held that non-deviation is evidence of "the domination of one organization by another." Communist Party v. S.A.C.B., 96 App. D.C. 66, 95, 223 F. 2d 531, 561. Likewise the Supreme Court has held that non-deviation is "relevant and significantly probative with respect to the issue of Soviet domination of the Party." Communist Party v. S.A.C.B., 367 U.S. 1, 61

In short, non-deviation is circumstantial evidence of who controls an organization. Since Party control is not a factor in the definition of Communist-infiltrated organizations, non-deviation from the Party is not evidence of the control component in that definition. To apply a non-deviation test in Communist-infiltrated cases would require an inquiry not into the issue of whether the accused organization deviates from the Communist Party, but whether it deviates from the individuals who are claimed to control it. Of course the Board made no such grotesque inquiry, nor did Congress contemplate that it should.

Nor under any circumstances is non-deviation evidence of the purpose for which an organization functions. Specifically, it is not probative of whether an organization meets the means component of a Communist-infiltrated organization by being a vehicle for giving aid and support to the Party. As we have just seen, this Court and the Supreme Court limited the evidentiary function of non-deviation to a question of control, not to the organization's purpose. This obviously follows from the fact that the organization's purpose depends not on the fact that its policies do not deviate, but on the contents or "merits" of the policies -- which, as was the case here, are not considered to be at issue under a non-deviation test.

Moreover, non-deviation requires a demonstration of a similarity of policies over a period of many years, if, as was admittedly the case here (1 J.A. 122, fn. 1), there is no showing of the chronological sequence in which the compared organizations adopted their respective positions. Communist Party v. S.A.C.B., 367 U.S. 1, 60-61. Application of the non-deviation test is, therefore, inconsistent with the three-year

provisions which are peculiar to Communist-infiltrated organizations. And it is clear that non-deviation was not proven from the policy positions taken by the Union within the three-year period. See supra, pp. 69-70.

Finally, non-deviation requires a showing of "coincidence of policies . . . over a vast area of subject matter." Communist Party v. S.A.C.B., ibid. The test cannot be intelligently applied to compare the views of a labor union, the great bulk of whose policies relate to the daily work and affairs of its members, with those of a political organization which is avowedly seeking to change society.^{35/} In attempting such a comparison, the Board was trying to add cows and sheep.

(f) Affiliation -- Section 13A(e)(5).

Section 13A(e)(5) requires the Board to consider to what extent, if any, an accused organization is, or within three years has been, affiliated in any way with the Communist Party. The Board found (Par. 235) that "there was not sufficient evidence to show a technical affiliation" of the Union with the Party, but that "there was, as stated, strong showing that respondent has been and is working in behalf of the Communist Party upon a consistent basis over a long period of time." We do not know where this "strong showing" was "stated," and there was, as we have seen, no such showing.

Moreover, section 13A(e)(5) is intended to supply a guide for

35. The Union passed a total of 194 resolutions in its 1952, 1953 and 1955 conventions. MM Ex. 125, pp. 273-76; MM Ex. 126, pp. 363-68; MM Ex. 127, pp. 317-20. Out of the total, the Board selected a handful for its non-deviation comparison (supra, p. 69).

determining the existence of the means component. By holding the section satisfied on the ground that the Union is "working in behalf of" the Party, the Board made the mistake of working backward. Instead of inferring, in part, its ultimate conclusion from a finding under the section, the Board inferred the finding from its ultimate conclusion.

It is clear that the Board erred by debiting the Union under section 13A(e)(5) instead of crediting it.

(g) Secrecy -- Section 13A(e)(6).

Section 13A(e)(6) directs the Board to consider to what extent if any, there has been concealed from the organization's membership the organization's affiliation with the Communist Party or the Party affiliation of those individual members of the organization who manage its affairs.

The Board found, in applying this section (Par. 235, 1 J.A. 147-48): "The Communist Party members in respondent have, with but few exceptions, concealed the fact of their Party membership and continue to do so."

The finding shows on its face that the Board misapplied the section. For the section requires the Board to consider the concealment of Party membership of the organization members who manage the organization's affairs. The finding, however, deals not with the Union's managers, but with Party members who are in the Union in any capacity.

Furthermore, the finding is vitiated by the Board's numerous errors in determining who are Party members.

In any event, it is obvious that concealment of Party membership has very little, if anything, to do with the issue of whether an organization is Communist-infiltrated.

IV. The Board erred in denying Union requests for the production of reports of interviews with witnesses for the Attorney General.

In Board cases a respondent is entitled, for purposes of cross-examination, to the production, on demand, of statements of the Attorney General's witnesses relating to the subject matter of their testimony and in the possession of the government. Communist Party v. S.A.C.B., 102 U.S. App. D.C. 395, 254 F. 2d 314, 327; cf. Communist Party v. S.A.C.B., 367 U.S. 1, 28-30.^{36/} This principle is applied in accordance with the provisions of the Jencks statute, 18 U.S.C. 3500.^{37/}

That statute defines a "statement" as meaning (1) a written statement made by the witness and signed or otherwise adopted or approved by him, or (2) a recording or transcription which is a substantially verbatim recital of oral declarations made by the witness to a government agent

36. In Communist Party v. S.A.C.B., 102 U.S. App. D.C. 395, 254 F. 2d 314, 322-24, the Court held that the remedy for a denial of production of statements is by motion for leave to adduce additional evidence. (But indicating the contrary, see Communist Party v. S.A.C.B., 367 U.S. 1, 30, 122-24.) Our motion for such leave was denied by the Court's order of September 24, 1962, without prejudice to presentation of the point in our brief on the merits.

37. The statute is in terms limited to criminal cases. However, in an unreported Memorandum of April 11, 1958, filed by this Court in Communist Party v. S.A.C.B., No. 11,850, directing a remand for the production of statements of a witness, the Court held: "We adopt for present purposes the definition of 'statements' contained in [the Jencks statute], not because the statute is binding in this proceeding but because it embodies succinctly the rule of law we think is applicable." In numerous Board cases which have thereafter been heard, the Board has consistently purported to apply the provisions of the Jencks statute.

and recorded contemporaneously with the making of the oral declarations.

A. The erroneous refusal to require production of reports of interviews by agents of the FBI and the Immigration Service.

The Department of Justice had in its possession reports of interviews of its witnesses Everingham, Dirdak, Kirby, Bain, Bush and Rasmussen. These interviews had been conducted by agents of the FBI or the Immigration Service. According to their affidavits, these agents took notes at the interviews and thereafter prepared the interview reports and destroyed the notes.^{38/} (1 J.A. 24-25; 2 J.A. 22-23; Sealed Bd. Exs. 1-6.)

Counsel for the Attorney General claimed that the interview reports were not statements of the witnesses. The Hearing-Member examined the interview reports in camera, concluded that he could not determine from their text whether or not they were statements of the witnesses, and that extrinsic evidence was necessary to enable such a determination. Thereupon the Attorney General submitted affidavits of the agents who had conducted the interviews and prepared the interview reports. The Hearing-Member received the affidavits over the Union's objections and denied the Union's motion that the agents be called to give testimony. The Hearing-Member then concluded that it appeared from the interview reports and the agents' affidavits that the reports were not statements of the witnesses within the meaning of 18 U.S.C. 3500. He also held that the affidavits established that the interview notes were not statements. Consequently, the Hearing-Member denied production of the inter-

38. The affidavits are included, inappropriately, in the sealed exhibits (Bd. Exs. 1-6) containing the interview reports to which the affidavits relate.

view reports (1 J.A. 23-25; 2 J.A. 21-26). The Board affirmed (1 J.A. 12).

The Hearing-Member's rulings were manifestly erroneous.

Where the trier is unable to determine merely from inspection of a document whether it qualifies as a "statement" of the witness, he is obliged to take "extrinsic evidence" on the subject, the natural sources of that evidence being the witness and the interviewing agent.

Campbell v. United States, 365 U.S. 85, 92-93 (Campbell I); Campbell v. United States, 373 U.S. 487 (Campbell II).

"Evidence" for this purpose means evidence, not ex parte affidavits. So Campbell I repeatedly alluded (at 94, 96, 98) to the need to call the interviewing FBI agent to testify in order to enable determination of whether an interview report was a statement of the witness interviewed. The case made no mention of any possibility that an affidavit from the agent would suffice, but to the contrary expressly recognized (at 96) the importance of defense opportunity to cross-examine the FBI agent.

Upon the remand of Campbell I, the FBI agent was called and testified, following which the trial court held that the interview report and interview notes were not statements. The First Circuit reversed because the trial court had overly restricted defense cross-examination of the FBI agent. Campbell v. United States, 296 F. 2d 527, 529; see Campbell II at 494. Obviously this holding presupposes that the defense has a right to cross-examine the agent. Here, however, the Hearing-Member did not merely restrict the right of cross-examination, he eliminated it by receiving the ex parte affidavits in lieu of testimony.

Again, in Saunders v. United States, 316 F. 2d 346, 349, this Court

ruled that an inquiry to determine whether documents are statements under the Jencks statute "may involve the interrogation of the witness or of the government agent, or an in camera examination of what is purported to be a statement under the statute." And in Hilliard v. United States, 317 F. 2d 150, 151, this Court held that the trial judge's inquiry "may involve an interrogation of witnesses, or he may make an in camera examination of the statement." Here the in camera examination was unable to resolve the issue. The alternative of "interrogation" was therefore necessary. Interrogation of the witnesses could not be, nor was it, dispositive of the character of the interview reports prepared by the agents; therefore interrogation of the agents was necessary. The agents' affidavits did not satisfy this requirement because they could not be interrogated.

Saunders approvingly cited (at 349) the Second Circuit's decision in United States v. McKeever, 271 F. 2d 669. McKeever held (at 674) that where it was unclear after in camera inspection whether FBI interview reports were statements as defined by the Jencks statute, the "proper course" was "for the trial court to conduct voir dire examination to obtain further evidence bearing on the issues raised by the statutory requirements," and, "The exclusion of these reports without voir dire examination was error." Nobody ever heard of a "voir dire examination" consisting of affidavits. In fact, no case has ever sanctioned the use of affidavits under section 3500, and the invariable practice has been to require the interviewing agents to take the stand for examination. See, e.g., United States v. Chrisos, 291 F. 2d 535, 537; United States v. Thomas, 282 F. 2d 191, 194.

The need to allow cross-examination of the FBI agents is emphasized by the inconclusive nature of the affidavits (included in Sealed Bd. Exs. 1-6). The affidavits emphasize that the witnesses' oral declarations were not reproduced verbatim in the interview reports. But the affidavits are too conclusory and imprecise to demonstrate without further probing that the reports were not "substantially verbatim" accounts of the witnesses' declarations. Cf. United States v. McKeever, 271 F. 2d 669, 675; United States v. Waldman, 159 F. Supp. 747, 749. Nor do the affidavits show that the contemporaneous recording requirement of 3500(e)(2) was not met. For although the affidavits show that the interview reports were not written until varying times after the interviews, they also show that the writers took notes during the interviews. And it is settled that if after-written reports are substantially accurate reproductions of notes taken during the interview, the reports satisfy the contemporaneous recording requirement of 3500(e)(2). Palermo v. United States, 360 U.S. 343, 351-52; United States v. Thomas, 282 F. 2d 191, 194; United States v. McKeever, supra, at 674; United States v. Waldman, supra, at 749.

The affidavits are even less satisfactory as an aid to determining whether the interview notes were statements. The Union was entitled to examine on the notes despite the representations that the notes had been destroyed. In the first place, the Union had a right to cross-examine on whether the claimed destruction had in fact taken place. On this precise point, it was stated in Killian v. United States, 368 U.S. 231, 241:

"However, the Solicitor General recognizes that petitioner is not bound to accept his statement that the F. B. I. notes of

Ondrejka's oral reports of expenses were destroyed in accord with normal practice long prior to the trial, and that petitioner is entitled to an opportunity to examine the F. B. I. agents and other responsible Government officials on these matters which, of course, can be done only in the District Court."

Secondly, even if the notes were destroyed, if oral examination could develop that the notes were or might have been statements, then the interview reports, even if not themselves statements, would have to be produced as secondary evidence of the notes. Ogden v. United States, 303 F. 2d 724, 738, ftn. 48; United States v. Waldman, supra, at 749.^{39/}

B. The non-production of attorneys' interview notes and memoranda.

Under the Jencks statute, notes or memoranda of government attorneys who have interviewed the witnesses in preparation for trial are on the same footing as any other documents which are or may be statements. Saunders v. United States, supra, at 349. Accordingly, government counsel was obliged to produce any such notes or memoranda, if they existed, at least for the trier's in camera examination. "When the question of Jencks Act production is properly raised by the defendant, it is incumbent upon the government to make the fullest disclosure to the Court withholding nothing from the Court which might conceivably come within the Act." Ogden v. United States, supra, at 733.

At the administrative hearing here, government counsel did not produce, for in camera examination or otherwise, any notes or memoranda of attorney interviews with witnesses (2 J.A. 26-27). It seems likely, however, that such documents did exist.

With respect to the witness Rasmussen, government counsel stated

39. This question was not reached in Campbell II (at 491 ftn. 5).

that he and co-counsel "had interviewed the witness on matters about which the witness testified," that co-counsel "may have made some notes at the time" but they were no longer available, and that a "witness-sheet" was subsequently prepared. The "witness-sheet" was not produced even for in camera examination, and the Hearing-Member refused to require its production. Nor did he conduct any inquiry into whether the interview notes were in fact "no longer available" or what "unavailability" meant. (2 J.A. 29-30.)

As to the witness Gardner, the record shows that he had been interviewed a number of times by government attorneys on the subject matter to which he eventually testified. When Union counsel requested production of any statements by Gardner emanating from these interviews, government counsel did not state that there were no attorneys' notes or memoranda of the interviews, but merely that he had produced all statements "within the purview of Section 3500." (2 J.A. 28.) Five other witnesses also stated on cross-examination that they had been interviewed by the government attorneys. Still others were not questioned on the subject. (2 J.A. 27-28.)

The reasonable supposition is that there were attorneys' interview notes or memoranda or "witness-sheets" for all or most of the nineteen government witnesses whose statements were demanded by Union counsel. Yet not a single such document was produced even for in camera inspection. Presumably government counsel made one or both of two mistakes. He may have erroneously assumed that the Jencks rule did not apply to notes or memoranda prepared by counsel. Or he may have thought that the documents were not producible because he did not con-

sider them to satisfy otherwise the statute's definition of statements. The latter idea, if it was entertained, did not, of course, excuse production of the documents for in camera examination and ruling by the trier. For it is settled that the prosecution may not "make the determination which the Act requires the Court to make" (Ogden v. United States, 303 F. 2d 724, 737), that "the statute does not vest in the Government the unilateral power to determine without judicial supervision a controverted question between the parties concerning whether a document in the possession of the Government constitutes a statement. . . ." (Bary v. United States, 292 F. 2d 53, 58). The Hearing-Member obviously violated this principle when he accepted the ambiguous conclusory representations of government counsel.

Only the government knows whether it had in its possession at the time of the administrative hearing attorneys' notes or memoranda of interviews with the witnesses. By not submitting any such notes or memoranda at the hearing and by ambiguous representations, government counsel made it appear to the Hearing-Member that there were none (2 J.A. 26-27, 29-30). We believe that the facts are to the contrary.^{40/} We submit that it is the government's obligation to inform the Court now of the facts. If the information develops that such notes or memoranda did exist, then the case must be remanded for Board determination of whether the notes or memoranda were producible as statements of the witnesses.

40. Our belief is fortified as to the witnesses Gardner and Fikes by the fact that attorney reports of interviews with them were produced under sec. 3500 for in camera inspection at the recent trial of United States v. Dennis, et al., U.S. Dist. Ct. D. Colo., Cr. No. 15124, in which their testimony was along the lines of their testimony in this proceeding.

V. The provisions of the Act relating to Communist-infiltrated organizations are unconstitutional on their face and as applied.

A. The First Amendment

Communist Party v. S.A.C.B., 367 U.S. 1, held valid the Act's registration requirements for Communist-action organizations. The principles applied in that case condemn the Act's provisions relating to Communist-infiltrated organizations.

In the Party case, the Court held that the First Amendment interest of the Party and its members in preserving the anonymity of the members was out-balanced by "the magnitude of the public interests which the registration and disclosure provisions are designed to protect and in the pertinence which registration and disclosure bear to the protection of those interests" (at 93). The "public interests" of "magnitude" were the need to protect the country against "foreign incursion" by "instruments of a foreign power" seeking by "every combination of possible means, peaceful and violent, domestic and foreign, overt and clandestine, to destroy the government itself" (at 96).

In short, the Communist-action provisions are valid because (1) Communist-action organizations are, by definition, controlled by a foreign power; (2) such organizations are, by definition, operating to overthrow the government by any possible means, including violence; and (3) the disclosure of the membership of such organizations is a pertinent method to protect against their dangerous machinations.

In the case of Communist-infiltrated organizations we have on one side of the scale not the interests of members of Communist-action

organizations in preserving their anonymity, but greater interests -- the interests of thousands of non-Communist workers in preserving their labor union and in choosing their own union officers and the interests of their officers in holding their positions. What is on the other side of the scales?

First, there is not here on the other side any foreign control. There is not even control by the Communist Party. On the contrary, here the Board found that the Union was controlled by its International Executive Board with the assistance of the Union's staff -- i.e., by the directors who are supposed to control the Union, assisted by the persons who are hired to assist them.

Nor does the Act even require that the directors of a Communist-infiltrated organization be controlled by the Communist Party. The directors need only have been engaged in giving aid or support to the Party within three years. Obviously, their giving aid or support to the Party does not establish that they are under the Party's thumb. This is particularly true under the Board's construction that "aid or support" is not limited to aid of the Party's alleged insurrectionary objectives.

Again, there is not here on the other side of the scales activity looking toward the overthrow of the government by foul means or fair. All that the Board found here on the means component was that the Union was "Communist oriented" because it advocated such positions as favoring peace in Korea and opposing the Internal Security Act and because, according to the Board, some Union leaders informed the members that big business was the enemy of the working class. The offense of the Union is that it allows its members to hear those ideas and to be

persuaded by them.

We think that both Communists and non-Communists have a First Amendment right to advance such ideas and to attempt to convince American workers of their validity. Even more important, American workers have a right to hear those ideas, whether from Communists or non-Communists, and a right to allow themselves to be persuaded by what they hear. For the "right to hear" is an integral part of the First Amendment. United States v. C.I.O., 335 U.S. 106, 144.

In short, the Communist-infiltrated provisions of the Act do not protect the security of the United States against foreign intrusion and incitement of violence. Instead, they seek to insulate the minds of workers from access to non-violent doctrine. The desire to furnish such insulation cannot outweigh the First Amendment interests of the Union, its officers and members. On the contrary, the First Amendment prohibits the government from assuming the role of a guardian of the mind.

Finally, the sanctions which the Act imposes on organizations found to be Communist-infiltrated are not pertinent to the protection of the national interest. If Congress is afraid that labor unions may be led astray by Communist leaders, the obvious solution is not to destroy unions under such leadership, but to prohibit Communists from holding union office. In fact, such a prohibition is contained in both section 5 of the Act, 50 U.S.C. 784, and 29 U.S.C. 504. In the name of anti-Communism, therefore, the Act gratuitously sacrifices the First Amendment associational rights of the Union's members, only a small fraction of whom can possibly be Communists. Thus the Act infringes the principle that regulatory legislation which adversely affects First

Amendment rights is invalid if there are "other ways to accomplish [its] legitimate aims without abridging freedom of speech and press." Talley v. California, 362 U.S. 60, 63.

B. Due process.

It is a necessary foundation of the Board's order that the Communist Party be a Communist-action organization. The Board held this foundation established not by any evidence in this case, but by the Board's finding in the case against the Party, which it considered conclusive of the issue (1 J.A. 73).

This procedure violates a fundamental principle of due process - that persons may not be found subject to liability without an opportunity to contest in a hearing the factual issues on which the liability is predicated. Heiner v. Donnan, 285 U.S. 312, 325; Mobile, Jackson & K.C. R.R. v. Turnipseed, 219 U.S. 35, 43; Ohio Bell Telephone Co. v. P.U.C., 301 U.S. 292, 301-02; Renaud v. Abbott, 116 U.S. 277, 288; Noto v. United States, 367 U.S. 290, 299; cf. Kirby v. United States, 174 U.S. 47.

This due process defect is magnified because the issue on which the Union was concluded -- that the Party is a Communist-action organization -- supplies the only conceivable justification for the order against the Union. Yet it is elementary that "a statute would deny due process which precluded the disproof in judicial proceedings of all facts which would show or tend to show that a statute depriving the suitor of life, liberty or property had a rational basis." United States v. Carolene Products Co., 304 U.S. 144, 152.

Furthermore, in the Party case the Board's determination was made

as of April 20, 1953, the date of the order against the Party (1 J.A. 73). Yet it was held conclusive of the state of facts on May 4, 1962, the date of the order against the Union. This holding is contrary to the due process requirement that "the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist." United States v. Carolene Products Co., supra, at 153; Chastleton Corp. v. Sinclair, 264 U.S. 543.

In National Council v. S.A.C.B., supra, at 392, the Court stated:

"Petitioner also argues that the finding in the Communist Party case that the Party is a Communist-action organization is not binding in this proceeding. We think the point is not well-taken."

Since the National Council case was reversed for insufficiency of the evidence, the quoted passage, if it is a constitutional holding, was dictum. If the passage was merely a construction of the Act, it still leaves open the question whether the Act as so construed is constitutional. Moreover, all that was said on the subject is what we have quoted; neither authorities nor reasons were stated. In any event, the National Council case involved the provisions of the Act relating to Communist-front organizations. And it could be argued, though we think wrongly, that such organizations may be precluded by the finding against the Party because, being by definition under Party control, they are in privity with the Party.^{41/} But Party control is not a feature of the

41. Since the above text was written and our typed brief filed, this Court made it clear in Jefferson School v. S.A.C.B., No. 12876, decided Dec. 17, 1963, that the doctrine of privity is the basis for holding alleged front organizations precluded by the Party case.

definition of Communist-infiltrated organizations. Hence even this synthetic privity does not exist here, and the same argument cannot be made. Accordingly, the statement in the National Council case should not be followed in this case.

Conclusion

The order of the Board should be set aside.

Respectfully submitted,

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APPENDIX

STATUTE INVOLVED

The following are pertinent provisions of the Subversive Activities Control Act of 1950, 64 Stat. 987, 50 U.S.C. 781, et seq., as amended (including additions made by the Communist Control Act of 1954, 68 State. 775). The Act's section numbers are followed by the appropriate section numbers of 50 U.S.C. in brackets.

Sec. 2 [781]. As a result of evidence adduced before various committees of the Senate and House of Representatives, the Congress hereby finds that -

(1) There exists a world Communist movement which, in its origins, its development, and its present practice, is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization.

(2) The establishment of a totalitarian dictatorship in any country results in the suppression of all opposition to the party in power, the subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative form of government, such as freedom of speech, of the press, of assembly, and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality.

(3) The system of government known as a totalitarian dictatorship is characterized by the existence of a single political party, organized on a dictatorial basis, and by substantial identity between such party and its policies and the government and governmental policies of the country in which it exists.

(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

(5) The Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, action organizations which are not free and independent organizations, but are sections of the world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

(6) The Communist action organizations so established and utilized in various countries, acting under such control, direction, and discipline, endeavor to carry out the objectives of the world Communist movement by bringing about the overthrow of existing governments by any available means, including force if necessary, and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship. Although such organizations usually designate themselves as political parties, they are in fact constituent elements of the world-wide Communist movement and promote the objectives of such movement by conspiratorial and coercive tactics, instead of through the democratic processes of a free elective system or through the freedom-preserving means employed by a political party which operates as

an agency by which people govern themselves.

(7) In carrying on the activities referred to in paragraph (6) of this section, such Communist organizations in various countries are organized on a secret, conspiratorial basis and operate to a substantial extent through organizations, commonly known as "Communist fronts," which in most instances are created and maintained, or used, in such manner as to conceal the facts as to their true character and purposes and their membership. One result of this method of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purposes of, and the actual nature of the control and influence exerted upon, such "Communist fronts."

(8) Due to the nature and scope of the world Communist movement, with the existence of affiliated constituent elements working toward common objectives in various countries of the world, travel of Communist members, representatives, and agents from country to country facilitates communication and is a prerequisite for the carrying on of activities to further the purposes of the Communist movement.

(9) In the United States those individuals who knowingly and willfully participate in the world Communist movement, when they so participate, in effect repudiate their allegiance to the United States, and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement.

(10) In pursuance of communism's stated objectives, the most powerful existing Communist dictatorship has, by the methods referred to above,

already caused the establishment in numerous foreign countries of Communist totalitarian dictatorships, and threatens to establish similar dictatorships in still other countries.

(11) The agents of communism have devised clever and ruthless espionage and sabotage tactics which are carried out in many instances in form or manner successfully evasive of existing law.

(12) The Communist network in the United States is inspired and controlled in large part by foreign agents who are sent into the United States ostensibly as attaches of foreign legations, affiliates of international organizations, members of trading commissions, and in similar capacities, but who use their diplomatic or semidiplomatic status as a shield behind which to engage in activities prejudicial to the public security.

(13) There are, under our present immigration laws, numerous aliens who have been found to be deportable, many of whom are in the subversive, criminal, or immoral classes who are free to roam the country at will without supervision or control.

(14) One device for infiltration by Communists is by procuring naturalization for disloyal aliens who use their citizenship as a badge for admission into the fabric of our society.

(15) The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a moment when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow of the Government of the United States by force and violence may seem possible of achieve-

ment, it seeks converts far and wide by an extensive system of schooling and indoctrination. Such preparations by Communist organizations in other countries have aided in supplanting existing governments. The Communist organization in the United States, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

Sec. 3 [782]. For the purposes of this title -

* * *

(3) The term "Communist-action organization" means -

(a) any organization in the United States (other than a diplomatic representative or mission of a foreign government accredited as such by the Department of State) which (i) is substantially directed, dominated or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance the objectives of such world Communist movement as referred to in section 2 of this title; and

(b) any section, branch, fraction, or cell of any organization defined in subparagraph (a) of this paragraph which has not complied with the registration requirements of this title.

(4) The term "Communist-front organization" means any organization in the United States (other than a Communist-action organization as defined in paragraph (3) of this section) which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title.

(4A) The term "Communist-infiltrated organization" means any organization in the United States (other than a Communist-action organization or a Communist-front organization) which (A) is substantially directed, dominated, or controlled by an individual or individuals who are, or who within three years have been actively engaged in, giving aid or support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title, and (B) is serving, or within three years has served, as a means for (i) the giving of aid or support to any such organization, government, or movement, or (ii) the impairment of the military strength of the United States or its industrial capacity to furnish logistical or other material support required by its Armed Forces: Provided, however, That any labor organization which is an affiliate in good standing of a national federation or other labor organization whose policies and activities have been directed to opposing Communist organizations, any Communist foreign government, or the world Communist movement, shall be presumed prima facie not to be a "Communist-infiltrated organization."

(5) The term "Communist organization" means any Communist-action organization, Communist-front organization, or Communist-infiltrated

organization.

* * *

(11) The term "Board" means the Subversive Activities Control Board created by section 12 of this title.

* * *

Sec. 10 [789]. It shall be unlawful for any organization which is registered under section 7, or for any organization with respect to which there is in effect a final order of the Board requiring it to register under section 7, or determining that it is a Communist-infiltrated organization, or for any person acting for or on behalf of any such organization --

(1) to transmit or cause to be transmitted, through the United States mails or by any means or instrumentality of interstate or foreign commerce, any publication which is intended to be, or which it is reasonable to believe is intended to be, circulated or disseminated among two or more persons, unless such publication, and any envelope, wrapper, or other container in which it is mailed or otherwise circulated or transmitted, bears the following, printed in such manner as may be provided in regulations prescribed by the Attorney General, with the name of the organization appearing in lieu of the blank: "Disseminated by _____, a Communist organization"; or

(2) to broadcast or cause to be broadcast any matter over any radio or television station in the United States, unless such matter is preceded by the following statement, with the name of the organization being stated in place of the blank: "The following program is sponsored by _____, a Communist organization".

* * *

Sec. 13 [792].

* * *

(e) In determining whether any organization is a "Communist-action organization", the Board shall take into consideration --

(1) the extent to which its policies are formulated and carried out and its activities performed, pursuant to directives or to effectuate the policies of the foreign government or foreign organization in which is vested, or under the domination or control of which is exercised, the direction and control of the world Communist movement referred to in section 2 of this title; and

(2) the extent to which its views and policies do not deviate from those of such foreign government or foreign organization; and

* * *

(f) In determining whether any organization is a "Communist-front organization", the Board shall take into consideration --

* * *

(4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2.

* * *

Sec. 13A [792a.] (a) Whenever the Attorney General has reason to believe that any organization is a Communist-infiltrated organization, he may file with the Board and serve upon such organization a petition for a determination that such organization is a Communist-infiltrated organization. In any proceeding so instituted, two or more affiliated

organizations may be named as joint respondents. Whenever any such petition is accompanied by a certificate of the Attorney General to the effect that the proceeding so instituted is one of exceptional public importance, such proceeding shall be set for hearing at the earliest possible time and all proceedings therein before the Board or any court shall be expedited to the greatest practicable extent.

* * *

(e) In determining whether any organization is a Communist-infiltrated organization, the Board shall consider --

(1) to what extent, if any, the effective management of the affairs of such organization is conducted by one or more individuals who are, or within three years have been (A) members, agents, or representatives of any Communist organization, any Communist foreign government, or the world Communist movement referred to in section 2 of this title, with knowledge of the nature and purpose thereof, or (B) engaged in giving aid or support to any such organization, government or movement with knowledge of the nature and purpose thereof;

(2) to what extent, if any, the policies of such organization are, or within three years have been, formulated and carried out pursuant to the direction or advice of any member, agent, or representative of any such organization, government, or movement;

(3) to what extent, if any, the personnel and resources of such organization are, or within three years have been used to further or promote the objectives of any such Communist organization, government, or movement;

(4) to what extent, if any, such organization within three years has

received from, or furnished to or for the use of, any such Communist organization, government, or movement any funds or other material assistance;

(5) to what extent, if any, such organization is, or within three years has been, affiliated in any way with any such Communist organization, government, or movement;

(6) to what extent, if any, the affiliation of such organization or of any individual or individuals who are members thereof or who manage its affairs, with any such Communist organization, government, or movement is concealed from or is not disclosed to the membership of such organization; and

(7) to what extent, if any, such organization or any of its members or managers are, or within three years have been, knowingly engaged --

(A) in any conduct punishable under section 4 or 15 of this Act or under chapters 37, 105, 115 of title 18 of the United States Code; or

(B) with intent to impair the military strength of the United States or its industrial capacity to furnish logistical or other support required by its armed forces, in any activity resulting in or contributing to any such impairment.

(f) After hearing upon any petition filed under this section, the Board shall (1) make a report in writing in which it shall state findings as to the facts and its conclusion with respect to the issues presented by such petition, (2) enter its order granting or denying the determination sought by such petition, and (3) serve upon each party to the proceeding a copy of such order. Any order granting any determination

on the question whether any organization is a Communist-infiltrated organization shall become final as provided in section 14(b) of this Act.

(g) When any order has been entered by the Board under this section with respect to any labor organization or employer (as these terms are defined by section 2 of the National Labor Relations Act, as amended, and which are organizations within the meaning of section 3 of the Subversive Activities Control Act of 1950), the Board shall serve a true and correct copy of such order upon the National Labor Relations Board and shall publish in the Federal Register a statement of the substance of such order and its effective date.

(h) When there is in effect a final order of the Board determining that any such labor organization is a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, such labor organization shall be ineligible to --

(1) act as representative of any employee within the meaning or for the purposes of section 7 of the National Labor Relations Act, as amended (29 U.S.C. 157);

(2) serve as an exclusive representative of employees of any bargaining unit under section 9 of such Act, as amended (29 U.S.C. 159);

(3) make, or obtain any hearing upon, any charge under section 10 of such Act (29 U.S.C. 160); or

(4) exercise any other right or privilege, or receive any other benefit, substantive or procedural, provided by such Act for labor organizations.

(i) When an order of the Board determining that any such labor organization is a Communist-infiltrated organization has become final,

and such labor organization theretofore has been certified under the National Labor Relations Act, as amended, as a representative of employees in any bargaining unit --

(1) a question of representation affecting commerce, within the meaning of section 9(c) of such Act, shall be deemed to exist with respect to such bargaining unit; and

(2) the National Labor Relations Board, upon petition of not less than 20 per centum of the employees in such bargaining unit or any person or persons acting in such bargaining unit or any person or persons acting in their behalf, shall under section 9 of such Act (notwithstanding any limitation of time contained therein) direct elections in such bargaining unit or any subdivision thereof (A) for the selection of a representative thereof for collective bargaining purposes, and (B) to determine whether the employees thereof desire to rescind any authority previously granted to such labor organization to enter into any agreement with their employer pursuant to section 8(a) (3) (ii) of such Act.

(j) When there is in effect a final order of the Board determining that any such employer is a Communist-infiltrated organization, such employer shall be ineligible to --

(1) file any petition for an election under section 9 of the National Labor Relations Act, as amended (29 U.S.C. 157), or participate in any proceeding under such section; or

(2) make or obtain any hearing upon any charge under section 10 of such Act (29 U.S.C. 160); or

(3) exercise any other right or privilege or receive any other

benefit, substantive or procedural, provided by such Act for employers.

Sec. 14 [793]. (a) The party aggrieved by any order entered by the Board under subsection (g), (h), (i), or (j) of section 13, or subsection (f) of section 13A, may obtain a review of such order by filing in the United States Court of Appeals for the District of Columbia, within sixty days from the date of service upon it of such order, a written petition praying that the order of the Board be set aside. A copy of such petition shall forthwith be transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of Title 28. Upon the filing of such petition the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Board; but the court may in its discretion and upon its own motion transfer any action so commenced to the United State Court of Appeals for the circuit wherein the petitioner resides. The findings of the Board as to the facts, if supported by the preponderance of the evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material, the court may order such additional evidence to be taken before the Board and to be adduced upon the proceeding in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by the preponderance of the evidence shall be conclusive, and its recommendations, if any, with respect to action in

the matter under consideration. If the court shall set aside an order issued under subsection (j) of section 13 it may, in the case of an organization, enter a judgment canceling the registration of such organization and relieving it from the requirement of further annual reports, or in the case of an individual, enter a judgment requiring the Attorney General (A) to strike the name of such individual from the registration statement or annual report on which it appears, or (B) cancel the registration of such individual under section 8, as may be appropriate. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in title 28, United States Code, section 1254.

(b) Any order of the Board issued under section 13, or subsection (f) of section 13A, shall become final --

(1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; or

(2) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Board has been affirmed or the petition for review dismissed by a United States Court of Appeals, and no petition for certiorari has been duly filed; or

(3) upon the denial of a petition for certiorari, if the order of the Board has been affirmed or the petition for review dismissed by a United States Court of Appeals; or

(4) upon the expiration of ten days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Board be affirmed or the petition for review dismissed.

* * *

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Sec. 16 [795]. Nothing in this title shall be held to make the provisions of the Administrative Procedure Act inapplicable to the exercise of functions, or the conduct of proceedings, by the Board under this title.

BRIEF FOR RESPONDENT

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,135

INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS,
PETITIONER,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, RESPONDENT.

ON REVIEW OF ORDER OF THE SUBVERSIVE ACTIVITIES
CONTROL BOARD

J. WALTER YEAGLEY,

Assistant Attorney General.

GEORGE B. SEARLS.

LEE B. ANDERSON.

DORIS H. SPANGENBURG.

Attorneys, Department of Justice,

Washington 25, D. C.

FILED

DEC

1953

Walter H. H. H. H.
CLERK

QUESTIONS PRESENTED

1. Whether the finding of the Subversive Activities Control Board that the petitioner Union is substantially directed, dominated, or controlled by individuals who are or within three years have been actively engaged in giving aid or support to the Communist Party of the United States and that it is serving, or within three years has served, as a means of giving aid or support to the Party, was supported by a preponderance of the evidence before the Board.

2. Whether the Board correctly construed the "three year" provisions of the Act to mean the three years preceding the filing of the Attorney General's petition with the Board.

3. Whether as a matter of administrative law the Board's findings and the reasoning of the Board are stated with sufficient clarity and definiteness for purposes of judicial review.

4. Whether the "infiltrated provisions" of the Act violate the First Amendment rights of petitioner's officers and members.

5. Whether the petitioner was entitled under the Fifth Amendment to relitigate in this proceeding the question whether the Communist Party is a "Communist-action organization" within the Act.

6. Whether the Board committed reversible error in the admission and utilization of evidence.

7. Whether the Board correctly interpreted and applied the provisions of 18 U.S.C. 3500 with respect to the production of investigators' notes and reports and with respect to the notes of Government attorneys.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,135

INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS,
PETITIONER,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, RESPONDENT.

*ON REVIEW OF ORDER OF THE SUBVERSIVE ACTIVITIES
CONTROL BOARD*

BRIEF FOR RESPONDENT

COUNTERSTATEMENT OF THE CASE

On July 28, 1955, the Attorney General of the United States pursuant to Section 13A(a) of the Subversive Activities Control Act of 1950, as amended, (50 U.S.C. 792a) filed a petition with the Board for a determination that the petitioner herein, the International Union of Mine, Mill and Smelter Workers (sometimes hereinafter called "Mine-Mill" or the "Union") is a "Communist-infiltrated organization" within the meaning of Section 3(4A) of the Act (50 U.S.C. 792 (4A)).

The petition alleged that the persons comprising the effective management of the Union are and for three years preceeding this filing of the petition and prior thereto had been actively engaged in giving aid and support to Communist organizations, foreign Communist governments, and the World Communist movement, and that

during the same period of time the Union, through its effective management has been made to serve as a means of giving aid and support to such organizations and governments, and to the World Communist movement (2 J.A. 5).

The petition then set forth a number of allegations of fact, including several involving the relationship of the Union with the Communist Party of the United States, which the petition alleged to be a "Communist-action organization" (2 J.A. 3-10).

Respondent filed its answer to the petition on January 23, 1956, denying that it was a Communist-infiltrated organization. (2 J.A. 15-21)

Hearings for the taking of evidence commenced on February 25, 1957 before Board Member Francis A. Cherry (1 J.A. 17).¹ The Attorney General's case in chief consisted of the oral testimony of 19 witnesses and 82 exhibits. (1 J.A. 17). Four of the witnesses had been members of both Mine-Mill and the Communist Party of the United States, ten others had been members of Mine-Mill but not of the Party, and the remaining five had been members of the Party but not of Mine-Mill (1 J.A. 17-18). Of the total of fourteen Mine-Mill members, five had been members as late as 1951, one until 1954, and another until 1955 (1 J.A. 18). The Union presented the oral testimony of 125 witnesses and identified some 204 exhibits of which 167 remain as part of the record (1 J.A. 18). Most of the Union's witnesses had been members and officers of local unions affiliated with the International organization (1 J.A. 18). Nine of these witnesses had been International officers or staff members (1 J.A. 18). The Union's witnesses were permitted to testify, over the Attorney General's objection that the testimony was irrelevant and immaterial, to the facts and their opinions to the effect that Mine-Mill has been run

¹ References to the Board's report include the recommended decision which the Board adopted with modifications (1 J.A. 14-15). Exhibits introduced in the proceedings before the Board by the Attorney General are cited "AG Ex." Exhibits introduced by the Union in the proceedings before the Board are cited "MM Ex."

"democratically" and as to their satisfaction with the economic gains of the Union (J.A. 138-139). The Board pointed out that the Union did not fully meet the issues raised by the Attorney General's evidence; and that with the exception of Mooney and Salvas who contradicted some of Gardner's testimony, none of the Union's witnesses were called to deny or explain the facts established by the petitioner (1 J.A. 140).

On December 26, 1961, the Hearing Member issued his Recommended Decision (1 J.A. 16-148) in which he concluded that the Board should grant the petition of the Attorney General for an order determining that the petitioner is a Communist-infiltrated organization (1 J.A. 148). Thereafter petitioner and respondent respectively filed their exceptions to the Recommended Decision. Both sides having waived oral argument, the proceeding was submitted on the record.

On May 4, 1962, the Board issued its Report (1 J.A. 4-148) and Order (1 J.A. 149) declaring the petitioner to be a Communist-infiltrated organization (1 J.A. 148). The Report was unanimous except for Chairman Lee who did not participate.

In the Report the Board adopts and makes as its own the findings and conclusions in the Recommended Decision as modified and changed in the Report. The Report and Recommended Decision contain a detailed review of the evidence and a statement of findings of fact based thereon. The Recommended Decision, the Report and Order, containing additional citations to the record inserted by counsel, are printed as Joint Appendix Part 1, pages 1-149. We do not undertake at this point to re-state the evidence. For present purposes a summary of the Board's findings is adequate.

The International Union of Mine, Mill and Smelter Workers is a labor organization in the United States, with headquarters at Denver, Colorado. The Union was founded at Butte, Montana, on May 15, 1893, under the name of Western Federation of Miners and continued under that name until December of 1916, at which time its name was

changed to its present one. From the date of its origin until 1938 it was affiliated with the American Federation of Labor, and from 1938 until February 1950, it was affiliated with the Congress of Industrial Organizations (CIO) as a participating member. In February of 1950, the Union was expelled from the CIO and since its expulsion the Union has not been an affiliate of any national federation or other labor organization, whose policies and activities have been directed to opposing Communist organizations, Communist foreign governments and the world Communist movement. (1 J.A. 28-29).

The jurisdiction of Mine-Mill under its constitution extends to all mining operations except coal, plus the processing of ore, chemical and reduction plants, casting and allied industries. In practice the Union's chief concentrations are in nonferrous metals, particularly copper, lead and zinc, and its effective jurisdiction is over mining, milling, smelting and refining these ores. (1 J.A. 29).

The International Union is a central body and grants charters to local unions which consist of subordinate bodies or groups of persons working in one or more mines, mills, smelters or groups of persons working in one or more mines, mills, smelters or related enterprises. The International Union was the sole respondent in the proceeding before the Board.

For purposes of administration and organization, the Union has set up seven geographical districts within the United States as follows: (States in the respective areas which are not listed are theoretically covered but did not have Union membership at the time of the hearing.).

District 1—Montana, Wyoming, and Colorado;

District 2—Utah, Nevada, Arizona, New Mexico and Texas;

District 3—Illinois, Ohio and Indiana;

District 4—Missouri, Kansas, Oklahoma and Arkansas;

District 5—Alabama, Georgia, North Carolina, Mississippi, South Carolina, and Tennessee;

District 6—New Jersey, Connecticut, West Virginia,
New York, and Pennsylvania;

District 7—Washington, Oregon, Idaho, and California.

Prior to 1955, there was an eighth district located in Canada but since then the Canadian locals have been autonomous. For some five years prior to 1948 there had also been a separate division called the Die Casting Division composed of locals in the die casting industry, but the division was dissolved and the locals put into the geographical districts in which they worked. At the time of the hearing, District 2 had the largest membership, and District 6 the next largest. At one time District 1 had one of the largest memberships. (1 J.A. 29-30).

Once each year the local unions elect delegates who, together with the officers of the International Union, meet in annual convention. Between conventions the affairs of the Union are directed by the International Executive Board composed of the president, two vice presidents, a secretary-treasurer, and a board member for each of the seven geographical districts. The officers and board members are nominated at the conventions and thereafter elected by referendum vote of the entire membership for terms of two years. Vacancies occurring between elections are filled by appointment by the International Executive Board. (1 J.A. 30-31).

In addition to the International officers, the Union has various staff members and other employees. The staff includes regional directors, International representatives, a research director, an educational director (between 1947 and 1952), and an editor of the official organ. The staff members are appointed by the International President subject to the approval of the International Executive Board. Chairmen of the convention committees are named by the International President and the members of the committees are appointed by the International Board, usually from a list of proposed committeemen submitted by each board member (1 J.A. 31).

The International representatives, as the title implies, represent the International Union in contacts and dealings with the local unions; they carry out organizing activities and serve the locals by helping with contract negotiations and grievances. (1 J.A. 31).

The International Union publishes an official organ known as the "Mine-Mill Union." (1 J.A. 31).

The Union has been and is a representative of employees within the meaning and for the purposes of section 7 of the National Labor Relations Act, as amended, and serves as the exclusive collective bargaining representative of employees under section 9 of that Act. (1 J.A. 31-32).

The entire record established that petitioner has been and is substantially directed, dominated, or controlled by the individuals who constitute the International Executive Board, assisted by the staff members.² (1 J.A. 33).

The Attorney General presented evidence to show that a number of petitioner's officers, board members and staff personnel were members of the Communist Party of the United States. None of the individuals so identified appeared to deny the evidence about them. Except for the testimony considered in the Board's Report, the Attorney General's evidence was not otherwise contradicted or rebutted. (1 J.A. 33).

The evidence before the Board established that the program of the Communist Party has been to gain control of labor unions, that the Party has looked upon labor unions as organizations of the working class through which the Party can work, and that the Party has put great stress on labor unions as most important for carrying through the aims of the Party. (1 J.A. 74).

The findings of the Board contain many instances of specific attention given by the Party to Mine-Mill. These

² Counsel for respondent acknowledged that at least between conventions the direction and management has been vested in and exercised by the International Executive Board (see, e.g., Tr. 5449-5450). These individuals—the executive board, assisted by the staff members—also constitute the "effective management" for purposes of the evidentiary consideration of section 13 (A) (c) (1).

findings include discussions and planning in connection with Mine-Mill at Communist Party meetings attended by Party members holding office in Mine-Mill and by Party functionaries not in Mine-Mill. (1 J.A. 74).

The Board found that the petitioner has consistently taken positions in opposition to the foreign policies of the United States and in opposition to the domestic laws and programs of the Government in the field of Communism. The Attorney General presented evidence that the policies and programs of the Union and the views advanced by its leaders in these areas have had a consistent similarity with and have been substantially identical to the positions taken and advanced by the Communist Party of the United States. (1 J.A. 120).

The evidence presented by the Union was primarily in the nature of an affirmative defense. A major portion of the testimony and exhibits presented by the petitioner was designed to show the democratic character of the Union. Some 111 persons from 55 local unions were at the time they testified, or had been, officers of the locals and members of the petitioner for varying periods up to many years. (1 J.A. 132-133). The testimony of the rank and file members was uniform and similar.

These witnesses testified, and it was found by the Board, that the officers of the local unions are elected by secret ballot of the local membership following nominations made at meetings in advance. Any member of the locals who is current in the payment of his dues is eligible for office and to make nominations. Local unions are represented at the annual conventions by varying numbers of delegates depending upon the size of the locals. The convention delegates are chosen by the local members by nomination and election. (1 J.A. 133).

Most of the Union's witnesses were asked and gave the opinion that democratic procedures are fully observed at local meetings and that the witnesses have not observed any indication of control by the Communist Party or any outside influence. The witnesses also testified that they never noticed anything at the annual conventions to in-

dicade the conventions were run or influenced by the Communist Party. On cross-examination those witnesses who were asked said that they knew nothing about the Communist Party or the tactics and strategy of the Communist Party in the labor movement. (1 J.A. 134).

In addition to testimony as to "democracy" in Mine-Mill, as they saw it, petitioner's witnesses testified to their satisfaction with the economic gains made over the years under the banner of Mine-Mill (1 J.A. 142).

On the matter of Communism, the Board found that whenever the Union was charged with being Communist or Communist controlled in the period covered by the evidence the reply has taken the form of denunciation of "red-baiting" tactics. (1 J.A. 140). Examples appear in the Board's report (1 J.A. 141-142).

The Board's ultimate conclusion of fact was that:

"On the basis of the entire record, it is concluded that [the Union] (A) is substantially directed, dominated or controlled by individuals who are, or within three years have been actively engaged in, giving aid or support to the Communist party of the United States, a Communist-action organization, and (B) is serving, or within three years has served, as a means for the giving of aid or support to such Communist Party. It follows that [the Union] is a Communist infiltrated organization as defined in the Act." (1 J.A. 148)

On June 29, 1962, the Union filed a petition for review of the Board's order pursuant to Section 14 (a) of the Act, 50 U.S.C. 793 (a).

STATUTE INVOLVED

The relevant portions of the Subversive Activities Control Act of 1950, 64 Stat. 987, 50 U.S.C. 781, *et seq.* (as amended) including additions made by the Communist Control Act of 1954, 68 Stat. 775, are reprinted in the Appendix to Petitioner's brief.

SUMMARY OF ARGUMENT

1. When the Attorney General filed his petition with the Subversive Activities Control Board, a group of individuals controlled Mine-Mill. Most of the group were members of the Communist Party but some merely gave aid and support to the Party. The group was composed of officers of the Union, members of the International Executive Board, and some staff members.

This group was able to control the Union because they had gained the trust and confidence of the majority of the membership as being good trade union leaders. That they controlled the Union was shown by the fact that the Union conventions invariably adopted measures they supported and defeated measures they opposed. This was evidence of control similar to that proved in *Communist Party v. Control Board*, 367 U.S. 1; it could be predicted with certainty that the convention (and the Union) would do what the group wanted it to do.

As to all but two of the group there was evidence competent under *Killian v. United States*, 368 U.S. 231, of Party membership, attendance at Party meetings, participation in Party activities, and admissions of membership.

The members of the group actively gave aid and support to the Communist Party and the Communist movement generally, by giving Union employment to Party members and directing them to work for Party causes while being paid by the Union, by cooperating in maintaining the Party's influence in the Union and steering the Union along Party lines at conventions, by planning Party control of local unions, and by using the Union to spread Party and pro-Soviet propaganda along the lines of foreign policy, opposing internal security action by the Government and following generally the Party political line. In the use of the Union and of his official position to spread such propaganda John Clark, the President of the Union, though not a Party member, was particularly active as shown by his speeches and official reports.

2. The three year period during which the Act calls for proof of Party membership or activity is the three years preceding the filing of the Attorney General's petition.

This follows from the fact that the Act requires the Attorney General to have "reason to believe" that an organization is Communist-infiltrated when he files the petition and to state under oath the facts on which he relies; and requiring the Board to report its findings and conclusions "with respect to the issues presented" by the petition.

Evidence of events preceding and following the three year period, is, however, pertinent when it tends to show the character of the Union during the period and to explain the actions and statements of individuals during the period.

3. During the three year period Mine-Mill, controlled and directed by the group described under "1", served as a means for the giving of "aid or support" to the Communist Party, the Soviet Union, and the Communist movement. As would be expected with a labor union, such "aid or support" took particularly the form of serving as an ostensibly independent medium and at the same time spreading the Communist position on all questions of international and domestic policies by the resolutions adopted at conventions, items in the Union paper, and statements of officers. This evidence of "non-deviation" proved control by the group mentioned under "1" (*Communist Party v. S.A.C.B.*, 96 U.S. App. D.C. 66, 223 F(2) 531), a majority of whom were active communists, and the resolutions, news items, and speeches evidenced that the Union itself was serving as a means for giving aid or support to the Communist Party and to the Communist movement. The "aid or support" described under "1" also amounted to aid or support by Mine-Mill.

To show conduct of the Union's "effective management" by "members, agents, or representatives" of a Communist organization "with knowledge of the nature and purpose thereof" it was not necessary to prove that the individuals had knowledge of the "illicit objectives" of the Party, such as violent overthrow and establishment of a dictatorship of the proletariat, because the Act is regulatory, not prohibitory, *Communist Party v. Control Board*, 367 U.S. 1; *American Communications Ass'n v. Douds*, 339 U.S.

382. The words "knowledge of the nature and purpose thereof", interpreted consistently with the Congressional intent, mean knowledge that the Communist Party is *the* Communist Party, and knowledge of some of its purposes, such as the purpose to infiltrate labor unions and work through them.

4. As a matter of administrative law the findings and conclusions of the Board are adequately set out in its Report and are sufficiently detailed. The connections between the subsidiary findings and the conclusions based thereon are clear. In brief, the Board concluded that during the three year period Mine-Mill was substantially directed, dominated, or controlled by individuals who were actively engaged in giving aid or support to the Communist Party and the Communist movement and that during that period the Union served as a means of giving such aid or support. The Report clearly shows the basis for the findings and the reasons for the conclusions.

5. The Act does not violate the First Amendment privileges of Mine-Mill's officers or members because it is a reasonable regulation by Congress to protect an important public interest. Congress enacted the "infiltrated" provision of the Act in the exercise of its power to regulate interstate commerce. *American Communications Assn. v. Douds, supra*. The legislative findings on which the provisions are based are sufficient and the Congressional intent is clear in the history of the Act.

6. There was no denial of due process because petitioner was not permitted to re-litigate in this proceeding the issue whether the Communist Party is a "Communist-action organization." In the structure of the Act as a whole the determination in the Party case is binding in subsidiary or dependent proceedings.

The determination that the Party is an action organization is a determination of status, it is most persuasive evidence of the fact, and as a matter of fundamental fairness it was proper for the Board to hold that that determination was binding here.

7. The Board (and the Hearing Member) correctly inter-

preted and applied the provisions of 18 U.S.C. 3500. It was clearly understood by all parties that the requirement of the production of documents for the trier of the facts to determine whether they were "statements" applied to attorneys' notes of interviews as well as to other documents. The Hearing Member did not err in accepting the representations of Government counsel that no such notes were in the Government's possession.

Neither did the Hearing Member err in determining that the F. B. I. and I. & N. "interview reports" were not statements. On the basis of the reports themselves and affidavits by the 10 agents who made them he properly concluded that the original notes made by the agents had been destroyed in accordance with normal practice and in good faith, and, reading the reports with the affidavits, he correctly decided that the reports were not "statements" because the agents made no attempt to include a substantially verbatim recital of the witnesses' own words.

As a matter of discretion and in the light of the circumstances of the case, the use of the affidavits were proper. There were 6 witnesses involved and 10 agents, stationed at widely scattered locations in the United States. At the hearing the petitioner made no real effort to examine the witnesses to determine how many notes the agents took or by what method, and the affidavits were clear that neither the original notes nor the reports were "statements." Requiring the appearance of the agents for examination would have involved a great many collateral issues.

ARGUMENT

1. The petitioner, Mine-Mill, is and for years has been substantially directed, dominated, and controlled by a group of Communist Party members and persons actively engaged in giving aid or support to the Communist Party, a Communist foreign government, or the world Communist movement.

Control of an organization is an issue of particular fact in each case. *Communist Party v. Control Board*, 367, U.S. 1, 40. In the case of an organization alleged to be "Com-

munist-infiltrated," it is not necessary for the Attorney General to prove that the Communist Party itself controls the organization; the issue is whether it is substantially directed, dominated, or controlled by members of the Party or persons active in support of Communist causes. *National Council of American-Soviet Friendship, Inc. v. Subversive Activities Control Board*,—U.S. App. D. C.—, 322 F(2d) 375, 380.

"Control" is the ability to direct, to guide towards a result desired by the controller. With organizations composed of human beings it can rarely be absolute or invariable; but it can be proved by evidence of voluntary compliance with the directions of another. *Communist Party v. Control Board*, *supra*, 367 U.S. at 41-42; *Communist Party v. Control Board*, 102 U.S. App. D. C. 395, 400; 254 F (2d) 314, 319.

A relationship amounts to control if we can predict with a reasonable degree of certainty that B will do what A wants it to do, and will not do what A does not want it to do; B being an organization, a group of people, and A being an individual or a group of individuals. See 367 U.S. at 38.

In Mine-Mill there has been a group of men, mostly in positions of officers or International Executive Board members, who ran the union and in a real sense controlled it. Most of them were regarded by the membership at large as very good trade union leaders, and they had the confidence and support of the membership (1 J.A. 77-78). Most of them held official positions during the period 1952-1955, some of them throughout the period. A majority were Board members but some others who were in positions of influence, were members of the staff of the International Union. Taken together they made up what Section 13 A (e) (1) terms the "effective management" of the Union, that is, the persons who really directed and managed the affairs of the Union. Their power and their influence is demonstrated by the fact that petitioner's brief mentions no instance where a Convention "ran away"

and disregarded their advice and the positions advocated by them on any matter.

As the Recommended Decision (approved by the Board) puts it: "... the conventions have consistently taken actions and adopted policies and programs favored by these officials, and the conventions have consistently rejected matters not favored by these officials. In a nutshell, the record establishes that the majority of the convention delegates have accepted without question or outward concern —'take their word for it' as one of respondent's witnesses testified—the views expressed and the policies advanced by those on the governing board who are Communist Party members and those who are amenable to the Communist Party." (1 J.A. 143), and between conventions the International Executive Board "has the power to make decisions or to make policy" (1 J.A. 143).

"Based upon review and consideration of the entire record", the Board adopted and made that finding its own (1 J.A. 15).

Of this group of individuals a majority were shown to have been members of the Communist Party and to have been active in giving aid or support to the Party; in two instances individuals were not shown to have been members of the Party but were shown to have given aid or support to the Party.

A. The individuals involved

(1) Raymond Dennis—

Raymond Dennis became a member of the Executive Board in 1950 for District 3 (Illinois, Ohio, Indiana) and was still in office in 1960 (1 J.A. 59). In September of 1951 he employed petitioner's witness Gardner, then a Communist Party member, as a Mine-Mill International representative after interviewing Gardner in company with Sam Reed, a Communist Party organizer (1 J.A. 35-6). At that time Dennis told Gardner that as a Mine-Mill organizer he would be expected to work with the Civil Rights Congress and the Committee for the Protection of

the Foreign Born, or any other organizations that the Communist Party might be interested in (1 J.A. 36)

While Gardner was working in Cleveland, Dennis told him that he (Dennis) had discussed with underground Party leaders the question of having Gardner work with the new National Negro Labor Council, in which the Communist Party was interested (1 J.A. 37). About January of 1953 he explained to Gardner that it was the Communist Party which had assigned Edith Lumer, the wife of an underground Party leader, to work in his office (1 J.A. 37-38). In December of 1951 or January of 1952, he told Gardner that he had signed a non-Communist affidavit under the Taft-Hartley Act, and that it was merely a protection against prosecution (1 J.A. 36-37). He also told Gardner that he had been present at the Communist Party meeting at which Jesse Van Camp had agreed to step down as Board Member in favor of Dennis (1 J.A. 37).

None of this evidence was hearsay, and from these statements the Board could properly infer that Dennis was a member of the Communist Party in 1951, 1952, and 1953, and thereafter. No effort was made to show that during that period he ever ceased to be a member. He never told the rank and file members of Mine-Mill that he was a member of the Party (1 J.A. 38).

On the evidence the Board could, and did, infer that Dennis was actively engaged in aiding and supporting the Communist Party. Examples of aid and support were the putting of Party members (or the wife of a member) on the Mine-Mill payroll, and directing Gardner, who was under his direction, to work for other organizations, such as the National Labor Negro Congress, which were "Communist causes." Dennis was a Committee chairman at conventions in 1952 and later (2 J.A. 44, 52), and the record of the proceedings of those conventions show that at no time did he oppose or vote against any of the pro-Soviet and anti-United States resolutions the conventions passed or the resolutions condemning legislation and United

States action in the internal security field.³ That is, as a member of the Executive Board he not only acted individually to aid and support the Communist Party but he was a party to using Mine-Mill as an organization to serve as a means for giving aid and support to the Communist Party and the Soviet Union.

"Aid and support" can only mean "help". Using Mine-Mill funds to pay Gardner for working in the "front" organizations the Party was interested in was helping the Party, and cooperating with other members of the Executive Board in putting out Soviet propaganda under the Mine-Mill name was helping the Party, the Soviet Union, and the world Communist movement.

(2) *Irving Dichter*

Dichter came into Mine-Mill as an international representative in 1942 when the Union absorbed the Die Casters union. In 1948 he became the member of the Executive Board for the Die Casting Division (1 J.A. 91-92). In 1954 he became Board Member for District 6, and Secretary-Treasurer in 1959 (1 J.A. 58-59).

He was identified as a Communist Party member by witnesses who met him in closed Party meetings in 1942, 1953, and 1954 (1 J.A. 38-40, 68, 70). At the 1942 meetings Mine-Mill matters were discussed (1 J.A. 38-39); the 1953 and 1954 meetings were of the Trade Union Commission of the Communist Party and of a secret State (Connecticut) Board of the Party (1 J.A. 39-40). In 1935 he told Gardner that he was investigating Gardner's activities and would report to the Rocky Mountain Region of the Communist Party (1 J.A. 40, 116).

On this evidence, none of it hearsay, and none rebutted, the Board could only find that Dichter was a Party member, and an active one, from 1942 through at least 1955.

In 1954 Dichter gave the witness Kent a report to take to a meeting of the secret state board of which they were both members (1 J.A. 39-40, 68). That was an example

³ We discuss these matters *infra*, pp. 35-42.

of "aid or support", and so was his investigation of Gardner on behalf of the Party in 1955 (*supra*).

Dichter was an active participant in Mine-Mill conventions. He served as Chairman of committees (2 J.A. 62). In 1951 he spoke at the convention in favor of a resolution calling for the restoration of peace in Korea (1 J.A. 123-129). That was the convention which charged the United States with genocide against the Negro people (1 J.A. 129). He made other speeches at conventions in favor of resolutions which advanced the "Party" line (1 J.A. 124). He was an active official of Mine-Mill and he was at the same time an active and energetic propagandist for the Communist Party and the Soviet Union. His activities and his speeches showed that he (like Dennis) knew the purpose of the Communist Party to infiltrate labor unions and to influence them and also that he supported the Communist positions (as to which see A.G. Ex. 101, 2 J.A. 71-74) on foreign policy and on matters like security legislation and investigations as to which the Party and the United States Government took opposing positions.

The Board could properly find that Dichter knew the "nature and purpose" of the Communist Party, the government of the Soviet Union, and the Communist movement within the meaning of Sec. 13A (e) (1) (50 U.S.C. 792 A (e) (1)).

(3) *Asbury Howard*

Asbury Howard was Eastern Vice-President of Mine-Mill from 1954 through 1960. Early in 1958 he told the witness Fikes that he had been in the Communist Party for a long time. (1 J.A. 41, 119). As far back as 1946 he had been specifically charged with being a member of the Party and had not, as far as appears, denied it. There was also evidence that in 1953 he was nominated as Eastern Vice-President by Charles Wilson, who admitted that he was a member of the Party (J. A. 42, 57, 59). That Wilson stepped aside for Howard pursuant to arrangements made at a Communist Party meeting was hearsay as to Howard,

but in an administrative proceeding it was admissible (Administrative Procedure Act, §7 (c), 5 U.S.C. 1006), and taking the evidence as to Howard as a whole, the Board did not err in considering the hearsay to corroborate the direct evidence. See, *Willapoint Oysters v. Ewing*, 174 F(2d) 676, 691 (C.A. 9), cert. denied, 338 U.S. 860; *Moran v. School Committee of Littleton*, 317 Mass. 591, 59N E(2d) 279, 282. The Board could reasonably find that he was a Party member during the period 1952-1955.

That Howard was active as a member of the Communist Party while he was an officer of Mine-Mill appears from his conversation with Fikes in 1958 (1 J.A. 41), and from the fact that at approximately the same time he conferred with Fikes, a member of the Party, and Pettis Perry, a member of the Party's National Negro Commission (1 J.A. 41-42, 119). His discussion of Party matters with Fikes and Perry was evidence that he was a member of the Party (*Killian v. United States*, 368 U.S. 231, 246-249), and by conferring with them he was aiding and supporting the Party. In his votes and actions as an officer of Mine-Mill he went along with the bloc of Communist members and sympathizers who, as we shall show, kept the Union going along a pro-Communist and anti-Government line.

(4) *Alton Lawrence*

Lawrence was a Board Member (District 5) from 1950 to 1959 (1 J.A. 43). In 1943 or 1944 when he was an International representative, he told the witness Homer Wilson that he was a member of the Party (1 J.A. 43) and at that time he discussed with Wilson, then Board Member for District 5, how the Party could help a Mine-Mill organizer.

There was no rebuttal of Wilson's testimony as to Lawrence's admission of Party membership and no claim that he ever left the Party.⁴ As a Board Member Lawrence went along with the Party bloc, who were a majority on

⁴ By standing mute he confirmed and strengthened the presumption of continued membership. See, *Maggio v. Zeitz*, 333 U.S. 56, 65-66, 75-76.

the Board during 1952-1955, and during proceedings of the 1949 Convention he spoke against barring Communists as Mine-Mill officials (1 J.A. 95).

(5) *Albert Pezzati*

Pezzati became Board Member for District 6 in 1947, and in early 1955 he succeeded Travis as Secretary-Treasurer (1 J.A. 59, 90). In 1954, while in Butte, he discussed with Gardner, a Party member, the position the Party had taken in regard to Taft-Hartley affidavits and the Party's attempt to protect the position of Chase Powers, also a Party member (*infra*) (1 J.A. 44). The Board could infer Party membership at that time from these conversations, which were couched in the terms of one Communist talking to another about Party matters.

The evidence of his "aid or support" covered the period from 1948 through at least 1953. In 1948 at a meeting of the International Board he took an active part in supporting the position of non-compliance with the Taft-Hartley Act and condemned Eckert who had introduced a resolution in the Die Casting Council favoring compliance. He seconded a motion by Travis to reaffirm the opposition of the Board to compliance, and at a conference in Denver, also in 1948, he was one of those who fought against compliance. (1 J.A. 91) At the 1948 convention he moved a resolution condemning a CIO official for his article, "We've Got the Reds on the Run" and also a resolution to strip Eckert and Madill of every right and privilege in Mine-Mill (1 J.A. 92). At the 1950 convention he moved non-concurrence in a resolution that no International officer should belong to the Communist Party and proposing that Travis resign as Secretary-Treasurer, and the resolution was defeated (1 J.A. 100). At the 1953 convention he spoke against a resolution that the pro-Soviet policy of the Union paper should be changed, saying:

"They [employers] don't like to have our membership receive information other than that contained in the press dominated and controlled and owned by the

big business interests of the country who are down the line against our interests, whether it relates to wages and conditions of work or whether it relates to peace and foreign affairs" (1 J.A. 106).

(6) *Maurice Travis*

Travis announced in the Mine-Mill paper on August 15, 1949, that he had resigned from the Communist Party, but the language of his announcement indicated that his resignation was only nominal (1 J.A. 46-47, 93). Later in 1949 he made a speech in which he said that he still believed in the principles and the practices of the Communist Party, and at the 1949 convention he told Kirby that all that the Taft-Hartley affidavit meant was that at the moment of signing he was not a member of the Party (1 J.A. 48, 194). In 1953 he said "I haven't changed my political beliefs any" (1 J.A. 48).⁵

In 1953 Travis discussed with Gardner the factional dispute then going on in the Party in Idaho, and instructed Gardner to keep out of it until the charges filed with the State Committee of the Party had been heard and the individuals concerned expelled from the Party (1 J.A. 48, 104).

On this evidence the Board properly inferred that Travis was a member of the Communist Party throughout the period 1952 to 1955. He resigned as Secretary-Treasurer of Mine-Mill in February of 1955 (1 J.A. 57). He had been so dominant a figure in the Union for years that he must be considered in determining whether the Union was Communist-controlled in 1952 and through 1955. His speeches and his actions as an officer of Mine-Mill, some of which we have already set out, necessarily had the effect of strengthening the position of the Communist faction in the Union and so aiding and supporting the Party by maintaining its influence. See also the call to the 1955 conven-

⁵ He was certainly a part of the "effective management" during the period 1952-1955."

tion (prepared by Travis, although the convention was not held until after his resignation) for an example of the "aid and support" he gave to the Party in the Union. (2 J.A. 61-62.)

(7) *Chase Powers*

Powers was a Board Member (District 7) in 1943 and held that position through 1960 (1 J.A. 45). Hartle had known him as a member of the Communist Party as far back as 1941 and collected Party dues from him. At that time Powers met with Hartle and Wildman (a Mine-Mill International representative) and discussed with them Mine-Mill affairs and the Party line in the Union (1 J.A. 45). In 1943 he had a similar discussion with Homer Wilson and told Wilson that he was a member of the Party (1 J.A. 45). In 1953 he told Gardner, a member of the Party, that charges had been filed in the Party in Idaho against Hansen, and told Gardner to isolate Hansen from the miners so that he could be more easily expelled from the Party (1 J.A. 45-46). As late as 1958 he discussed with Fikes, also a Party member, Party matters and Mine-Mill affairs (1 J.A. 46).

Powers' talk with Wilson in 1943 was at a time when he probably saw no reason for not acknowledging his Party membership, but his talks with Gardner in 1953 and with Fikes in 1958 were examples of one Party member discussing Party matters with another member and amounted to "aid or support" along the line of seeing that the Party members in Mine-Mill should know what was going on and not get in each other's way or work at cross-purposes. That was "aid or support" because it was obviously necessary and to the advantage of the Party that its members in Mine-Mill should work together.

Throughout his membership on the Board Powers worked harmoniously with the other Party members, Dennis, Dichter, Howard, Lawrence, Pezzati and Travis. There is no instance in the record in which any one of them set out on a line of his own, and in 1955, at the time the Attorney

General's petition was filed, they had a majority on the International Board, even if we do not take into account the votes of Clark and Salvas, who were not Party members, but who were "amenable" to the Party (*infra*).

(8) *Ernest Salvas*

Salvas was appointed Board Member in 1954 for District 1 and continued in that office until 1961 (1 J.A. 53). There was no evidence that he was a member of the Communist Party and the Hearing Member stated that he could not determine whether Salvas knew that the Party backed him when he ran for election as Board Member (1 J.A. 55). Petitioner cites no instance in which he took or urged any action contrary to what the Communist members of the Board wanted. In no way was he an obstacle to control of Mine-Mill by the Communists who were officers and staff members.

(9) *John Clark*

Clark was nominated by Travis in 1947 for President of Mine-Mill and elected (1 J.A. 50, 90). He admired Travis as a union leader and praised him in his 1949 report and at the 1953 convention. (1 J.A. 51)⁶ In 1953 when the officers of a Mine-Mill local in Montana urged Clark to remove Harlow Wildman (a member of the Communist Party) and Salvas from their positions as International representatives in the area, Clark's reaction was that he would go back and discuss it with Travis (1 J.A. 51). Whether he supported Travis or was dependent on him makes no difference; we have been able to find in the record no instance of any disagreement between them.

The Report finds that Clark was not shown to have been a member of or affiliated with the Communist Party (1 J.A. 50). The Report also finds, however, that "Clark has consistently in his official reports and statements as president of Mine-Mill directed the organization in opposi-

⁶ It was in his 1949 Report that Clark attacked the Atlantic Pact (1 J.A. 124).

tion to the foreign policy of the United States, in opposing the Federal laws designed to preserve the national security, and in opposition to moves within the Union to bar Communists from holding positions of leadership and trust" (1 J.A. 52).

In his 1949 report Clark condemned the "anti-Communist crusade" and urged a policy of coexistence between the Soviet world and the western world (1 J.A. 51). In 1950, after the CIO had expelled Mine-Mill, he likened the CIO constitutional amendments to "the suppression of ideas that Wall Street does not like" (1 J.A. 52, and see A.G. Ex. 36, 2 J.A. 40). At the same convention a speaker said that fear of Communists evidenced unsound minds, that loyalty investigations were witch hunts, and that the war budget enacted by Congress was a fear budget, and Clark commented that every word uttered had been along the lines of the thinking of Mine-Mill (1 J.A. 100). In his 1951 report Clark adopted another piece of Communist jargon and referred to cases of "barbarous killings of men—victims of 'Jimcrow Justice'" (1 J.A. 129).⁷

Going on to the 1952 convention, Clark continued his course of following the Communist line. One Karen Morley delivered at the convention a vitriolic speech attacking the American conduct of the then pending war in Korea, and Clark's comment was that Miss Morley's thinking "is the thinking of all of us." (1 J.A. 124-125, 2 J.A. 46-50). And Clark's 1953 report devoted 8 pages to attacking the policies and programs of the United States, particularly in the field of foreign policy and anti-Communist action (1 J.A. 106-107). See also 2 J.A. pages 56-57, 64-65, 70 for examples of positions and statements by Clark as president of the Union.

We must also note that Clark effected, or at least acquiesced in, the discharges of Hain and Gardner as inter-

⁷ The merits or demerits of the positions taken by Clark are not the issue. The question is the extent to which he followed the Communist line, whether in any particular case the "line" was right or wrong on the facts. See, *Communist Party v. Subversive Activities Control Board*, 96 U.S. App. D.C. 66, 223 F(2d) 531, 560-561.

national representatives when they became obnoxious to the Communist Party (1 J.A. 50, 117), and that it was during his presidency that Everingham and Dirdak were expelled from the Union, after they had fought the Party in the Union (1 J.A. 99-100).

Illustrative of Clark's habit of going along with the Communist officers of Mine-Mill is an incident in Denver in 1948. Before the convention that year a conference had been called to discuss the question of compliance with the non-Communist affidavit requirement of the Taft-Hartley Act. Kirby attended as a delegate from Local 392 to urge compliance. The day before the conference itself some of the delegates who favored compliance "caucused" with John Clark and Clark told them he would recommend compliance. Later Kirby chanced to overhear Pezzati and Van Camp⁸ and some others talking, and he heard Van Camp say: "Listen, fellows, John Clark is weakening, and we have got to give him a shot in the arm."⁹ When the vote was taken at the conference, among the people who spoke against compliance were Travis, Van Camp, Pezzati, and Dichter (2 J.A. 35-36) and the vote was against compliance. Apparently Clark never made the recommendation he had said he would make.

According to Section 7(a) of the Communist Control Act of 1954, (50 U.S.C. 782(4A)), a "Communist-infiltrated organization" is one substantially controlled by "individuals who are, or who within three years have been actively engaged in giving aid or support to a Communist action organization—". Under Section 10 of the 1954 Act (50 U.S.C. 792(a)(e)(1)) membership in the

⁸ Van Camp was a member of the Communist Party (1 J.A. 37). At that time the Party's position was that union officers should not file the affidavits (See, 1 J.A. 94).

⁹ At that time the Communist Party position was that unions should not comply with the affidavit requirements of the Taft-Hartley Act, and that was the position adopted by Mine-Mill in 1947 and not changed until 1949 (1 J.A. 93).

Party is evidence which the Board shall consider in determining whether an organization is "Communist-infiltrated", but it is not an indispensable element; what is relevant is "aid and support" whether by members or non-members. See, *National Council, etc. v. Subversive Activities Control Board*, U.S. App. D.C. , 322 F(2) 375, 380. Even if Clark was not a Party member, the conclusion is compelled that during his service as president he was aiding and supporting the Communist Party, the Soviet Union, and the World Communist movement, and his statements and activities were so explicit that he must have known that he was doing just that thing. And, since he did "aid and support", he is to be counted along with the Communist members as one of the group which controlled the Union and used it as a "means for—the giving of aid or support to the Communist Party," etc.

(10) *Staff members*

Section 13 A (e) (1) of the Act (50 U.S.C. 792 a (e) provides that in determining whether an organization is Communist-infiltrated, the Board shall consider, among other things, "to what extent, if any, the effective management of the affairs of such organization is conducted by one or more individuals who are, or within the past three years have been (A) members, agents or representatives of any Communist organization. . . ."

The words "effective management" plainly imply that the section was drawn to include all persons who really run the organization, and are "effective instruments of its policies." It is a broader term than "officers." See, *Labor Board v. Coca Cola Bot. Co.*, 350 U.S. 264, 268.

The petitioner takes two somewhat differing approaches to the question of "effective management." Under point II A 1 of its brief it seems to assume that the "effective management" must be the Board members, the "directors". Under point III B 2 (b), however, when dealing

with similar language in Section 13 A (e)(2), they suggest that the words "any member, agent, or representative" of the Communist Party who formulates union policies must mean persons who are *outside* of the organization's official directorate.

The statutory language is clear enough. Under Section 3 (4A) (50 U.S.C. 782 (4A)) an organization is Communist-infiltrated if in fact the individuals who control it have actively aided or supported a Communist-action organization, a Communist foreign government, or the world Communist movement, and the fact that they are also the elected leaders of the organization cannot change that fact and prevent the application of the statute. It is a question of control in fact, and does not depend upon whether the individual has a particular title or upon the authority the charter or the constitution of the organization purports to give him.¹⁰

As a matter of ordinary business sense and experience we know that participation in the "effective management" of an organization is in many cases not limited to the individuals who bear the titles of officers, and, as we have indicated, *supra*, the words of the statute manifest an intent on the part of Congress to have the Board take into account the activities of all persons *who in fact* control. In a large organization, operating on a nationwide scale, the staff, and particularly the headquarters staff, are necessarily a part of the "effective management." In the case of Mine-Mill we have six (formerly seven) districts, operating in different parts of the country, with a Board member at the head of each, plus a President, two Vice-presidents, and a Secretary-Treasurer. Each of the six International Executive Board members is bound to devote a considerable part of his time to supervising and admin-

¹⁰ The seven subsections of Section 13 A (e) (50 U.S.C. 792a) set out categories of evidence the Board shall consider in determining whether an organization comes within the statutory definitions, but they do not purport to be exclusive nor to bar the use of other evidence that is competent and probative.

istering his own district. The "headquarters" personnel, the President, the Secretary-Treasurer, and their assistants, who have day by day contact with those officers, and who advise them and carry out their orders, are all participants in the "effective management" of the organization as a whole in a very real sense.

Of the "staff" of Mine-Mill we propose to discuss three men who by virtue of their jobs and their activities had a substantial share in the "effective Management" during the period of time considered by the Board.¹¹

(a) *Harold Sanderson*

Sanderson was Comptroller of Mine-Mill and seems to have held that position for many years (1 J.A. 103). As far back as 1942, according to Carmen Wilson, when he was an International representative, he advised her to join the Communist Party when she applied to Mine-Mill for a job. (2 J.A. 33).

At that same time he participated in Communist Party meetings which discussed a big organizing drive by Mine-Mill at the Remington Arms plant (1 J.A. 70-71). In 1953 he instructed Gardner, a Party member and an international representative of Mine-Mill, who was being transferred by the Union to the Coeur d' Alene district in Idaho, to remain aloof from a factional dispute in the Party in Idaho until such time as he (Sanderson) or someone else from the International office advised him to resume his Party contacts (1 J.A. 103). In February of 1955 Sanderson was present at a Party meeting at which Gardner was called upon to explain his position in regard to the settlement of a recent Mine-Mill strike in Butte and his activities during a controversy in the Union as to

¹¹ This is not to say that the three we mention were the only "staff" members who participated in the "effective management", but they are examples of the pervasive influence of the Communist Party in Mine-Mill and of the use of the personnel and resources of the Union to furnish aid or support to the Party and the Communist movement.

whether Travis should resign as Secretary-Treasurer of the Union (1 J.A. 115-116).

The testimony of Carmen Wilson and Gardner was competent and probative evidence that Sanderson was a member of the Party throughout the period from 1942 up to and including 1955. No attempt was made to rebut it or to show that Sanderson ever severed his connection with the Party. It was also evidence that he, one of the head members of the "staff", was active in giving aid and support to the Party by advising and participating in Party activities in the Union, in formulating Union policies along the lines favored by the Party, and in assisting in maintaining control of Mine-Mill by Party members.

(b) *Graham (Cozy) Dolan*

Even more active in pursuing Communist Party aims in Mine-Mill was Dolan. From some time in 1955 Dolan was editor of the Union newspaper, an important link between Union leadership and the rank and file (1 J.A. 61-62).¹² From 1947 to 1952 he had held the position of Educational Director. (1 J.A. 62)

As far back as 1942 and 1944 Dolan had been present at Communist Party meetings which discussed the Mine-Mill organizing campaign at Remington Arms. (1 J.A. 67-70) During the 1954 contest in Montana between Mine-Mill and the Steelworkers over the right to represent the Butte and Anaconda locals, Dolan was in charge of publicity for Mine-Mill, (1 J.A. 54) and consulted with John Hellman, a Communist Party leader in Idaho and not a member or representative of Mine-Mill, and Al Skinner (*infra*). At about the same period he was a member of a group of Gardner, Hellman, and Moralez (all Party members), which met to plan how to keep control of the Mine-Mill locals (1 J.A. 66-67, 69, 107, 108). As we have indicated, Hellman was not a member or officer of Mine-Mill and these meetings about keeping "control" of the Mine-Mill locals can have

¹² The preceding editor, Morris Wright, was a party member. (1 J.A. 61).

concerned only the control by Party members of local unions by working through the Mine-Mill machinery.¹³

Late in 1953 or early in 1954 Dolan told Gardner that he had filed charges with the State Committee of the Communist Party in Idaho against Rudy Hansen, who was involved in the factional dispute Sanderson warned Gardner about (1 J.A. 104-105). It is impossible to imagine a more telling admission of Party membership. Dolan did not say that charges had been filed; what he said was that *he* had filed them.

During the period after the Butte strike settlement (October, 1954), at Party meetings Dolan criticized Gardner, said Gardner had taken an anti-Communist position in a Mine-Mill matter, and that he was going to have him investigated—which can only mean investigated by the Party (1 J.A. 61-62, 67, 110).

In late 1954 Dolan and Hellman instructed Gardner to prepare a report for the Rocky Mountain Region of the Communist Party on the strike settlement in Butte (1 J.A. 111).¹⁴ And in 1955 after Gardner had been expelled from the Party, Dolan told Moralez and Hellman that Gardner would have to be removed from the Mine-Mill payroll.¹⁵ That was done (1 J.A. 117).

On this record there was abundant competent evidence of Dolan's Party membership from 1942 on through 1955. See, *Killian v. United States*, 368 U.S. 231, 246-251. He was in a position of influence in the Union, educational director, publicity man, and editor of the paper, and he used his position and his influence to fortify and maintain

¹³ Dolan was regarded as an active leader of the Union, though he held no elective office. See the resolution of the 1952 convention which commended him (along with Clark, Larson, Chas. Wilson, Travis, and Skinner) by name. 1 J.A. 77, 102.

¹⁴ Not long after Dichter told Gardner that he, Dichter, was to investigate Gardner and report to the Rocky Mountain Region (1 J.A. 116).

¹⁵ To incur the displeasure of the Communist faction in Mine-Mill also meant expulsion for Hain (1 J.A. 50), Dirdak (1 J.A. 99), and Cunningham (1 J.A. 100).

the position and influence of the Party members in the Union. That was "aid or support" by Dolan as an individual, and insofar as his efforts succeeded in influencing or directing Union action, it was "aid or support" by the Union as an organization.

(c) *Albert Skinner*

Skinner came into Mine-Mill as an international representative in 1942 when the Union absorbed the National Association of Die Casters (1 J.A. 82, 83, also 65).¹⁶ He seems never to have disclosed that he was a member of the Party (1 J.A. 79). Like Dolan, he was commended by name in a resolution passed at the 1952 convention (1 J.A. 77, 102). In 1948, with Travis, Powers, Pezzati, and others he had supported non-compliance with the Taft-Hartley affidavit requirement.¹⁷ During the secession movement in Butte early in 1954 he was a member of the Party group which included Moralez, John Hellman, and Dolan, which discussed how to keep control of the Mine-Mill locals in Butte, the recruiting of Party members from the Mine-Mill locals, and having Party members get active on committees of the local unions (1 J.A. 54, 68-69, 107). Skinner was also a participant in the Party meeting in February of 1955 which questioned Gardner about his activities and positions in regard to the Butte strike settlement and the movement to have Travis resign as Secretary-Treasurer (1 J.A. 67, 115-116).

On this record the Board properly found that Skinner was a member of the Communist Party during the period of at least 1953-1955, because his actions had a "rational tendency to show" membership (*Killian v. United States, supra*, at 249). In times of stress, as during the secession movement in Butte early in 1954 and the move to oust Travis a year later, Skinner would not have been called into Party meetings and consulted about how to maintain and increase the Party influence in Mine-Mill had he not

¹⁶ In 1960 he became Western Vice-President (1 J.A. 57).

¹⁷ At that date that was also the Party position (1 J.A. 90-91, 94).

been a member and been recognized as such by the Party. See *Killian v. United States, supra*.

Moreover, the same facts which evidence Skinner's Party membership also evidence that he was active in "giving aid or support" to the Party, a Communist-action organization. As a member of the Communist Party's "Mine-Mill Committee" he functioned as a part of the "effective management" of the Union (1 J.A. 54-55, 59, 107-108, 111, 112) at least during the period 1953-1954, and participated in the "leadership" meeting in Butte (1 J.A. 111-112). In 1952 the convention commended Skinner and Dolan, along with Clark, Larson, Charles Wilson, and Travis, as part of the "leadership" of the Union (1 J.A. 77).

Petitioner's argument is that the Board's theory of "control" cannot be maintained because it must rest on a finding, after probing of the mental state of thousands of American workers, that they have been "brainwashed." It insists that the Union is run democratically and therefore cannot be "controlled."

The question of "control", as the Supreme Court pointed out, is one of human relationships, and "control" denotes "a relationship in which one entity so much holds ascendancy over another that it is predictably certain that the latter will comply with the directions expressed by the former". *Communist Party v. Control Board*, 367 U.S. 1, 37, 38. What is true of the relationship between the Communist Party of the Soviet Union and the Communist Party, U.S.A., is equally true when it is a question of control by a group of individuals in Mine-Mill.

What is important is the *fact* of control, however motivated and however obtained. The Board referred to testimony that Howard, Dichter, Powers, Pezzati, Skinner, Travis "were very good trade union leaders and conscientious in their work," and that they had gained the confidence and support of the majority of the Union membership to the extent that several witnesses testified that they

would "take the word" of Dennis, Van Camp, or Dichter as to whether a law was good or bad for labor (1 J.A. 77-78, also 78-80).

That the clique of Communist Party members and sympathizers managed to maintain their ascendancy by doing effective and legitimate trade union work and securing gratifying economic gains (1 J.A. 76, 139) does not change the fact that they did establish and keep control, so that they were able to use and did use the Union to "aid or support" the Communist Party and the Communist movement. Congress knew that it was dealing with labor organizations which have elected officers, and that those officers, in order to keep their jobs, would have to satisfy their constituents from a trade union point of view.¹⁸

Certainly the fact that a number of the Union members have no objection to Communists holding Union office (1 J.A. 78-79, 142) is irrelevant on the question of "control". "Control" in fact is the issue, not the reasons for it or the means by which it is brought about or maintained.

¹⁸ In the debate in the Senate, Senator Goldwater explained:

"The essence of the proposed legislation is to provide a means whereby the members of a labor union, the rank and file, as they are commonly called, can be informed by their Government, on the basis of proven facts, that their leadership is such as to constitute a threat to themselves and their country. When they have been so advised they are given reasonable time and opportunity to decide whether they wish to continue as a Communist-controlled union, or to rid themselves of their subversive leadership. If they choose the former course which they have the right to do, no prohibition is imposed against their choice. The only result will be the withdrawal of special Federal support and protection for union conduct which, because of Communist direction, the Congress believes to be inimical to the best interests of the United States."

(100 Cong. Rec. 14112. See also H.R. Report No. 2651, 83rd Congress, 2nd Session, pp. 2-3). That Congress acted with a definite intention to regulate labor unions is clear from the legislative history. See, Senate Report No. 1709, *U.S. Code Congressional and Administrative News* (1954) pp. 3145-3150.

2. The "three year period" mentioned in the Act was the period from July 28, 1952 to July 28, 1955.

In the definition of a Communist-infiltrated organization 50 U.S.C. 782 (4A) reference is made to individuals "who within three years have been actively engaged in giving aid or support". Similar references occur in Section 13 of the Act. 50 U.S.C. 792 a (e) (1-5) (7).

The Board read the three year provisions as meaning the period immediately prior to the date the Attorney General's petition was filed (1 J.A. 6-8, 34-35), and the Union seems to have adopted the same interpretation, at least until the very close of the hearing (1 J.A. 6-7).

In its brief, however, the petitioner states that the Board's holding as to the 3 year period is "probably erroneous" and it suggests that the "three years" means the period from July 28, 1952 up to March 10, 1961.

That the Board's holding was correct appears from the language and structure of the Act. Section 13, as amended (50 U.S.C. 792 a) provides that "whenever the Attorney General has reason to believe that any organization is a Communist-infiltrated organization, he may file with the Board and serve upon such organization a petition for a determination that such organization is a Communist-infiltrated organization". The petition is to be under oath and "shall contain a statement of the facts relied upon in support thereof." The Board is to report stating its findings of fact and its conclusions "with respect to the issues presented by such petition."

The Attorney General's "reason to believe" must exist as of the date he files the petition and he can only state the facts as of that date he believes them to be. When the organization answers the issues are framed, and they can only be framed as of the date of the petition.¹⁹

Petitioner's present position would read into the statute

¹⁹ In Mine-Mill's Answer, under "Fourth Defense" it refers to "the three (3) years preceding the filing of the petition." (2 J.A.).

after each reference to three years the words "plus the period which shall elapse until the Board issues its order." Under such a reading orderly procedure would be impossible, for each day of the proceeding would call for a corresponding up-dating of the evidence.²⁰

Of course, evidence of events prior to the 3 year period may be relevant and have probative force, because, "The past is clearly pertinent to the present nature of a person or an organization." *Communist Party v. S.A.C.B.*, 96 U.S.App. D.C. 66, 223 F(2d) 531,570. Evidence of Party membership in 1944, as with Sanderson (*supra*), is relevant and strengthens the inference from his actions in 1953 and 1955 that he was at the later dates a member of the Party and actively giving aid or support to it. John Clark's speeches and actions before 1952 can be added to what he said and did in 1952 and 1953 to support an inference that during the three years he was actively giving "aid or support." And in the case of Howard, who admitted in 1958 that he had been a member of the Party "for a long time", that fact can be read with his election to office in 1953 as the result of a Party decision to justify the inference that he was a Party member throughout the period 1952-1955 and that his motions and conduct at conventions was giving "aid or support."

The petitioner points out that the Attorney General's petition was filed July 28, 1955, and that the Board's order did not issue until 1962. As the report points out a considerable part of this delay occurred at the request of or for the benefit of the Union and other substantial periods resulted from action by this Court and by the Supreme Court in the *Party* case and other court proceedings, and additional delay was occasioned by the necessity of recalling witnesses to comply with the decision in *Jencks v. United States*, 353 U.S. 657, and the holding of this Court in 1958 that the principle of *Jencks* and 18 U.S.C. 3500 apply to proceedings before the Board (1 J.A. 17, 20-21).

²⁰ Before the Board the petitioner moved to strike "the evidence which post-dates the petition." (1 J.A. 34)

In any event there is no need to attempt to apportion the responsibility, if any, for the policy of Congress expressed in the Act is not to be frustrated by the fact that a long drawn-out proceeding is required to effectuate it.

3. Mine-Mill served as a means of giving aid or support to the Communist Party and Communist causes.

"Aid or support", as used in the Act, has a dual function. In the definition of Communist-infiltrated organizations one element is that the individuals who control it actively give aid or support to a Communist-action organization²¹ within the three year period. A second element is that the organization so controlled serves, also within the three years, "as a means for (i) the giving of aid or support to any such organization, government, or movement." Section 3 (4A) (50 U.S.C. 782(4A)).

The two aspects of "aid or support" frequently overlap or coincide. A speech by Pezzati at a Union convention may constitute, on his individual part, "aid or support"; it may also result in "aid or support" for some Communist cause by Mine-Mill as an organization. Or, when Dennis hired Gardner, known to him to be a Party member, to work for Mine-Mill *and* for organizations in which the Communist Party was interested, and when he supervised and directed Gardner's work, Dennis, as an individual was giving aid and support to the Party by giving employment to one of its members, and he was also using the resources of Mine-Mill for "aid or support."

Taking the words "aid or support" in their plain and ordinary sense they refer, as we have indicated, to help of any kind and they are relevant both to the question of control and to the question of aid or support by Mine-Mill. This Court said in the *Party* case: "Any type of aid received by one organization from another is pertinent to the question whether the one operates to achieve the ob-

²¹ Or a Communist foreign government or the world Communist movement.

jectives of the other." *Communist Party v. S.A.C.B.*, 96 U.S. App. D.C. 66, 223 F(2d) 531, 561.

The "infiltration" sections of the Act deal largely with labor unions, though not exclusively, and one form of aid or support which we might expect a union to give the Party would be propaganda to promote the Party's social and political aims. That was one way in which Mine-Mill "served" the Party.

The propaganda which Mine-Mill put out which aided the Party and the Communist movement in part took the form of public statements of Union leaders and resolutions passed at conventions. Insofar as those positions taken by the Mine-Mill leaders and adopted by the conventions dealt with matters of national and international politics they invariably followed the Communist Party line and opposed and criticized the action taken by the United States and its agencies. See, 1 J.A. 121-131.²²

Congress had this specific form of aid or support in mind when it was considering the Act. A Senate subcommittee stated:

'There are three ways of identifying Communist-dominated unions: (1) By the adherence of the union's leadership to the shifting pattern of the Communist Party line; (2) by direct acts such as strikes which are designed to implement the interests of Soviet foreign policy; (3) By systematic participation of Communist Party functionaries in determination of union policy.

"There is no great difficulty in identifying Communist-dominated unions on the first count, that is, the unerring conformity of the union's policies to the Communist Party line in vogue, and as it shifts as directed by the Kremlin." (100 Cong. Rec. 14134)

²² "If one factor in a continuing series of events that are brought to pass through human intervention, the law would have to have the blindness of indifference rather than the blindness of impartiality not to attribute the uniform factor to man's purpose." *Cassell v. Texas*, 339 U.S. 282, 293.

As a labor union, Mine-Mill—and its officials—necessarily had to concern themselves with the interest of its members in wages, hours, and working conditions. It was the work done along these lines that made the Union a valuable propaganda vehicle. As a large union and an old union, Mine-Mill was well known to many in the labor movement, and the Union being ostensibly independent, what its officers said and the resolutions the conventions voted and the items printed in the Union paper would carry weight, though the statements, the resolutions, and the news items might deal with political matters outside the field of ordinary trade union activity. When Mine-Mill in its conventions advocated repeal of the Smith Act, of the Internal Security Act, and attacked the F.B.I., and the officers of Mine-Mill coupled these attacks with statements that the “enemy” was Big Business and the Government because Big Business controlled the Government, that was propaganda in a form calculated to appeal to the members of the Union and their friends, and it was “aid or support” for the Communist Party and the Communist movement.

Nothing in the sections of the Act with which we are concerned mentions “non-deviation” as such, but non-deviation is of such probative value, so relevant, that it is inconceivable that Congress meant to exclude it from consideration. On the contrary, as we have shown *supra*, it was specifically mentioned in Congress.

In *Communist Party v. S.A.C.B.*, 96 U.S. App. D.C. 66, 223 F(2d) 531, 560-561, this Court said:

“The Party says the ‘non-deviation’ test in Section 13(e) (2) is vague and irrational. We think it difficult to conceive of a more proper standard for the purpose. In an inquiry as to the domination of one organization by another, the extent of the deviation one from the other in views and policies is both relevant and material; indeed it would be one of the necessary considerations. If there were no similarity, domination would be negatived almost conclusively, whereas, if there were identity, domination would be a definite pos-

sibility, if not a certainty. Petitioner says that the test includes non-deviation respecting policies calculated to secure peace and welfare as well as others characterized as evil. The argument misses the point of this section of the statute. The point is foreign domination; identity of purpose and policy, whether good or bad, is clearly relevant in the proof."

Certainly the fact that Congress did not specifically mention non-deviation in this part of the statute does not show that it intended to exclude from consideration "one of the necessary considerations". Control in the case of a Communist-infiltrated organization means control by a group of individuals rather than by the Party itself, but when the individuals are shown to be active and devoted members of the Party, the probative force of the inference to be drawn from non-deviation is equally as strong as it would be in the case of an action or front organization.

In addition to propaganda, the Communist officers and functionaries of Mine-Mill gave aid or support to the Party by discussions with each other and with Party leaders on how to keep control of the local unions (1 J.A. 54, 67, 69, 107); on recruiting members for the Party from Mine-Mill and on getting Party members to be active on local union committees (1 J.A. 68, 75); (J.A. 62, 70); on providing Party guidance for Union officials (1 J.A. 55); and, in general, on maintaining the Party's foot-hold in the labor movement by protecting and promoting its influence in Mine-Mill (1 J.A. 68, 69, 104, 107-108, 110).

One example of active aid or support was Pezzati's speech at the 1953 convention defending the pro-Communist line of the Union paper (1 J.A. 105-106). Also, at the 1948 Convention Pezzati moved adoption of a resolution condemning a CIO official for an anti-Red article (1 J.A. 92). Other examples of aid or support are the defeat at more than one convention of proposals which would bar Communists from office in the Union (1 J.A. 117, 95). Examples of use of the Union for purposes of Communist

propaganda are the passage of resolutions criticizing the Truman Doctrine and the Marshall plan (1 J.A. 93, 100, 123), the resolutions opposing the policies of the Government in the field of Communism or subversion and calling for the repeal of the Smith Act, the Internal Security Act, and the foreign policy of the United States (1 J.A. 101, 102, 106-107, 118).²³

The persistent and consistent coincidence of language used and of positions taken by Mine-Mill and its officials with those of the Party constituted in itself "aid or support" as well as being significant evidence of control by the members of the Party who participated in the Union's management.²⁴

The provisions of the Act dealing with "infiltration", like those requiring registration by "action" and "front" organizations, as parts of a regulatory, not a prohibitory scheme, so it is not necessary to prove "specific intent" to achieve what the petitioner calls the "illicit objectives" of the Communist Party. Cf. *Communist Party v. Control Board*, 367 U.S.1, 56; *Communist Party v. S.A.C.B.*, 96 U.S. App D.C. 66, 223 F(2d) 531, 558. Application of the statute on the basis of Party membership can be justified without requiring proof that the individual advocates violent overthrow or a proletarian dictatorship. *Carlson v. Landon*, 342 U.S. 524, 535-537, 540; *Galvan v. Press*, 347 U.S. 522, 528, 529.

²³ After reviewing the legislative history of the Act, a commentator has concluded that "Congress found that Communist dominated unions provided a source of funds for Communist causes, served as a respectable medium for disseminating Communist propaganda, and, most significantly, presented the threat of political strikes—those which would not be called but for a desire to implement the policies of a Communist foreign power." Note, *Federal Anti-Subversive Legislation of 1954*, 55 Col. L. Rev. 631, 675 (1955; foot-notes omitted from quotation).

²⁴ Whether the positions taken by its officers and by Mine-Mill were correct or not as matters of domestic or international politics is beside the point. *Communist Party v. Control Board*, 367 U.S. 1, 59-61; *Communist Party v. S.A.C.B.*, 96 U.S. App. D.C. 66, 223 F (2d) 531, 560-561.

One of the "considerations" the Board is to consider in determining whether an organization is "infiltrated" is "to what extent, if any, the effective management—is conducted by—individuals who are—members, agents, or representatives of any Communist organization—with knowledge of the nature and purpose thereof." Section 13 A(e) (1). Petitioner argues that this requires that *scienter* be proved, knowledge of the "illicit objectives" of the Communist organization. But Section 13 A(e) (1) is not a part of the definition of an "infiltrated" organization, and it is not a requirement at all, but merely a statement of evidentiary matters that the Board shall consider, if evidence along those lines is offered. The Board could properly make a determination based on findings in respect to the matters mentioned in some of the subsections of 13 A (e); it does not have to make findings under all, and it may make findings in relevant respects not enumerated. See, *Communist Party v. S.A.C.B.*, 96 U.S. App. D.C. 66, 223 F(2d) at 559-560. In short, a determination of "infiltration" may be made even if "knowledge" of "nature and power" is not proved.

Since "specific intent" in the sense of *Yates v. United States*, 354 U.S. 298, and *Scales v. United States*, 367 U.S. 203 is not an issue in the case, the language of Section 13 A (e) (1) may be given an interpretation consistent with the Congressional purpose. One clearly expressed Congressional purpose was to diminish the risk of political strikes and to strengthen the hands of unionists who wanted to cleanse their unions of Communist influence. See, Senate Report No. 1709, 83rd Cong., 2d Sess., 1954 *United States Congressional and Administrative News*, p. 3146, and the legislative history discussed in Note, *Federal Anti-Subversive Legislation of 1954*, 55 Col. L. Rev. 631, 674-675, 681, 693-694.²⁵

The Act being regulatory in nature, the words "knowl-

²⁵ In the debate on the bill *American Communications Assn. v. Douds*, 339 U.S. 382 was quoted at length See, 100 Cong. Rec. 14111-14112.

edge of the nature and purpose" are given a meaning consistent with the language of the Act and a meaning which will advance its purpose if they are read to exclude "innocent dupes" and unwitting members of the Party and other Communist organizations. See, *Galvan v. Press*, *supra*, and *Carlson v. Landon*, *supra*.

The Board found that, "By reason, among other things, of being active in both the Union and the Communist Party, attending Communist Party conclaves, meeting with high functionaries of the Communist Party, and taking positions and carrying out activities consistent with Communist Party policy,"²⁶ the conclusion is required that the Communist Party members on the Executive Board²⁷ have knowledge of the nature and purpose of the Communist Party" (1 J.A. 146-147,13).

Evidentiary findings which support this conclusory finding are that Hellman, a Communist Party functionary, said to Skinner and Dolan that the Party must keep its foothold in Mine-Mill (1 J.A. 69-75, and see Pezzati's statement, 1 J.A. 44), the efforts made by the Party and by Mine-Mill representatives "to keep control of Mine-Mill locals in Butte and Anaconda" (1 J.A. 54, 69, 107); its efforts to recruit from Mine-Mill and to have its members active in the Union (1 J.A. 68, 75), and to put Party members on the Mine-Mill staff. (1 J.A. 69, 75). And the resolutions at conventions echoing the Party line were properly the basis for an inference that at least the Executive Board members who voted for them had knowledge of the purpose of the Party.²⁸

²⁶ Knowledge of the nature and purposes of an organization may be inferred from the fact of membership. See, *Frankfeld v. United States*, 198 F(2d) 679, 686 (C.A. 4), cert. denied, 344 U.S. 922; *United States v. Dennis*, 183 F(2d) 201, 230, aff'd 341 U.S. 94. It would seem that the inference is stronger when the membership has been prolonged and active.

²⁷ The "activities" element of this statement also applies to President John Clark, who faithfully parroted the Communist Party line for years. See 2 J.A. 49-50, 56-60, 64-65, 70-71.

²⁸ Their persistent and successful attempts to defeat "anti-Communist" resolutions. See 1 J.A. 80-120.

Certainly such active and long-time Party members as Dennis, Dichter, Powers, Pezzati, Travis, and the others knew of the Party's interest or "purpose" in working in and through trade unions.²⁹

On the record, the Board's finding that the officers (and staff) in question knew that the Communist Party is the Communist Party which was the subject of so many arguments at Union conventions and meetings and they knew that it had the "purpose" of working in and through labor unions is supported by the evidence.³⁰

4. As a matter of administrative law the Board's findings are sufficient in form and the reasons for its determination are clear.

Petitioner argues that the evidentiary or subsidiary findings of the Board (1 J.A. 28-142) are inadequate and that they are not sufficiently connected up to its conclusory findings (1 J.A. 142-148) to make clear the basis and the reasoning for its determination.

As a matter of administrative law an order is procedurally valid if it sets out enough of the facts and enough of the reasoning on which it is based to enable the parties and the court to see what has been done and whether the agency has complied with the statute. *Colorado Inter. Gas Co. v. Federal Power Commission*, 324 U.S. 581, 595; *Securities and Exchange Commission v. Chenery Corp.*, 332 U.S. 194, 196; *Alabama G.S.R.Co. v. United States*, 340 U.S. 216, 228. The law does not require that the report of an administrative agency, when the basis for its decision is clear, contain a system of cross-indexing and cross-references to enable the reviewing court to trace the con-

²⁹ See 1 J.A. 73-76. For Travis's views, see 1 J.A. 47-48. His statement was quoted at length in the legislative history. 100 Cong. Rec. 14106-14107.

³⁰ Also, as we have pointed out *supra*, the Board's determination can be supported on the basis of findings under Section 13 A(e) (2) (formulation of policies), (3) (use of personnel and resources), (4) (furnishing assistance), and (6) (concealment of Party membership), without finding of knowledge of nature and purpose.

nection from every subsidiary fact to every conclusion. Cf. *Communist Party v. S.A.C.B.*, 102 U.S. App. D.C 395, 254 F(2d) 314, 331.

The issues before the Board were two: (1) whether during the three year period Mine-Mill was substantially directed, dominated, or controlled by individuals who were actively engaged in giving aid or support to a Communist-action organization, a Communist foreign government, or the world Communist movement; and (2) whether during the same period Mine-Mill served as a means for the giving of such aid or support.

As to (1) the Board found definitely that during the relevant period Mine-Mill was substantially controlled by Dennis, Dichter, and the other persons we have discussed, and that during that period those persons engaged in conduct which amounted to "aid or support." As to (2) the Report enumerated numerous instances when Mine-Mill, manipulated by its "effective management" served as a means of giving "aid or support" within the Act.

That basis for the Board's order is clear; it is not a case where the Court is left in a state of uncertainty as to "what a decision means". *Sec'y of Agriculture v. United States*, 347 U.S. 645, 654.

5. The provisions of the Act relating to infiltrated organizations do not violate the First Amendment rights of officers or members of the organizations.

In *American Communications Assn. v. Douds*, 339 U.S. 382, the Court held:

1. That Congress had justifiably found that there was a real and substantial danger of political strikes, inspired or led by members of the Communist Party, which would obstruct interstate commerce;

2. That such political strikes were an "evil" with which Congress could deal under its power over interstate commerce;

3. That Congress in its discretion could prescribe a remedy reasonably calculated to deal with the evil;

4. That the "discouragement" of barring the use of the facilities of the Labor Board to unions whose officers did not file non-Communist affidavits was an appropriate remedy and within the constitutional authority of Congress;

5. That, because of the substantial nature of the national interest involved, the provisions of Section 9(h) of the Taft-Hartley Act were not an unconstitutional infringement of the First Amendment rights of speech and association, being no more than an indirect, conditional, and partial abridgement of such rights.

When the 1954 Act was considered Congress was still concerned about political strikes and the efficacy of the Taft-Hartley affidavit provision was seriously questioned. The *Douds* case was referred to and quoted at length. 100 Cong. Rec. 14111-14112. Congress decided to provide an additional remedy, the provisions relating to "infiltrated" organizations. See, 100 Cong. Rec. 14097-14098, 14106-14107, 14134-14144, 14197.

In passing the "infiltrated" provisions of the Act Congress was consciously exercising its power to regulate commerce; evidence of that fact is found in the references to the National Labor Relations Board and particularly the wording of Section 13A(i)(1) that "a question of representation affecting commerce—shall be deemed to exist with respect to such bargaining unit," that is, when an organization has been determined to be "infiltrated" within the Act.³¹

The decisions in *American Communications Assn. v. Douds*, *supra*, *Dennis v. United States*, 314 U.S. 494, *Barenblatt v. United States*, 360 U.S. 109, and *Communist Party v. Control Board*, 367 U.S. 1, establish that the Congressional action was neither unreasonable or arbitrary. *Douds* accepted as a reasonable basis for the non-Communist affidavit requirement the Congressional finding that Communists in labor unions tend to promote political strikes and thereby to endanger the national interest. In 1954 Con-

³¹ See, Note, *Federal Anti-Subversive Legislation of 1954*, 55 Col. L. Rev. 631, 675, 693-695.

gress was of the same mind about political strikes as it was in 1947, and it was for Congress to decide on the appropriate remedy for the "evil" it found. *Communist Party v. Control Board*, 367 U.S. 1, 96, citing *United Public Workers v. Mitchell*, 330 U.S. 75, and *Douds*.

Adding the *Party* decision of the Supreme Court to *Douds*, it is clear that the legislative findings in 1953 can not be termed unfounded or irrational. The "infiltrated" provisions attach, not to the incidents of speech or association, but to the incident of control by persons who have actively and with knowledge engaged in aiding or supporting the Communist Party or the Communist movement. *Communist Party v. Control Board*, 367 U.S. 1, 90, 94-95.

Even assuming that the Act does restrict the interest of the members of the Union to be completely free to choose their own officers and to contest elections before the Labor Board, still the Congress could properly find that the national interest in preventing political strikes and in diminishing the influence of the Communist Party in the labor movement justified in the national interest such restrictions. See, *Communist Party v. S.A.C.B.*, 96 U.S. App. D.C. 66, 223 F(2d) 531, 544, 546.

6. Petitioner was not denied due process because under the Act the determination that the Party is a Communist-action organization is conclusive for purposes of this proceeding.

Petitioner argues that it was denied due process because it was denied a hearing on and an opportunity to contest the factual issue whether the Party is a Communist-action organization within the Act. The Board held that it would not retry in these proceedings the issue whether the Communist Party is a "Communist-action" organization. The Board said (1 J.A. 73):

"On the basis of an order of the Subversive Activities Control Board issued on April 20, 1953, and the opinion of the Supreme Court of the United States rendered on June 5, 1961, in *Communist Party of the United*

States v. Subversive Activities Control Board, 367 U.S. 1, rehearing denied 30 L.W. 3115, official notice is taken that the Communist Party of the United States is a "Communist-action organization" as that term is defined in section 3 of the Subversive Activities Control Act of 1950, as amended. Accordingly, it is a "Communist-action organization" for the purposes of section 3(4A) of the Act.

The "requirement of reasonableness which is at the basis of the rule of due process" was satisfied (American Law Institute, *Restatement of Judgments* (1942) Sec. 86; *Hansberry v. Lee*, 311 U.S. 32, 42-43), because to bind petitioner in this proceeding by the finding in the *Party* case "is appropriate to the case, and just to the parties to be affected." *Hagar v. Reclamation District*, 111 U.S. 701, 708; *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 162-163 (concurring opinion). In the *Party* case the Board had before it a transcript of over 14,000 pages of testimony and hundreds of exhibits (J.A. 14n 9), and the Party could fairly be said to represent the petitioner and those similarly situated. *Hansberry v. Lee*, *supra*; *Restatement of Judgments*, *supra*. Reading the Act as a whole, it cannot be said that any requirement of fairness calls for relitigation of the "action organization" issue.

In many situations a status or duty to act is established administratively, and the party is not entitled to re-litigate before a jury in a criminal trial the status or duty so established. See, *Cox v. United States*, 332 U.S. 442, 453; *Yakus v. United States*, 321 U.S. 414, 444, 445, and cases cited. The order in the *Party* case was judicially reviewed and affirmed; the present order is being reviewed now; and the cumulative effect of the provisions of the Act is to give petitioners that fundamental fairness of treatment which is due process.

The petitioner complains further that in the *Party* case the Board's determination was made as of April 20, 1953, the date of the order against the Party, yet it was

held conclusive of the state of facts on May 4, 1962, the date of the order against the Union. There is no merit to such an argument. The fact is that on May 4, 1962, the date of the order against the Union, the Party was still an organization against which a registration order had been made and the scheme of the Act seems to require that the status of an action organization shall continue for purposes of the Act until and unless relief is granted under Section 13(b).

The final order of the Board against the Party became effective October 20, 1961 (J. A. 15), over two years ago, and the Party has taken no action under Section 13(b) to obtain relief from its obligation to register. And to the extent that the Party represents the interests of its members (*Communist Party v. Control Board*, 367 U.S. 1, 81), they can fairly be held subject to the consequences of its failure to act.³²

In *National Council of American-Soviet Friendship, Inc. v. S.A.C.B.*, U.S. App. D.C. 322 F(2d) 375, 392 the Court held:

"Petitioner also argues that the finding in the *Communist Party* case that the Party is a Communist-action organization is not binding in this proceeding. We think the point is not well taken."

This cannot, as petitioner suggests, be disregarded, because the character of the Communist Party as a Communist-action organization was an issue argued in the case before the Court of Appeals.

Petitioner argues that this holding in the *National Council* case should not be controlling here because there is not the privity between the Party and a Communist-infiltrated organization that there is between the Party and a Communist-front organization since, under the statute, Party control is not a feature of the definition of a Communist-

³² Under Section 13(a) individual members registered under Section 8 may also petition the Attorney General for the cancellation of such registration.

infiltrated organization. But "privity" is not necessarily a part of due process; certainly to hold the Union concluded, for purposes of this proceeding, does not run counter to considerations of fundamental fairness. Cf. *Hansberry v. Lee*, *supra*. At the very least the order in the *Party* case, affirmed by the Supreme Court, is as persuasive evidence that the Party is an action-organization as one could expect.

7. The Board properly interpreted and applied 18 U.S.C. 3500.

In regard to the production of documents petitioner makes two main points: (1) that the Hearing Member did not make sufficient inquiry as to the existence and producibility of notes government attorneys made of interviews with witnesses; (2) that it was error to determine that interview reports were not "statements" on the basis of the documents themselves (inspected *in camera*) and the affidavits of the interviewing agents (copies of which were given to petitioner's counsel) and to deny petitioner's motion that the agents be called to testify.

Petitioner seems to assume that attorneys' notes of interviews with witnesses must *always* be produced for inspection *in camera*, even in cases where it is clear beyond question that the notes are not a "statement" in any sense of the word. We do not so read the basic opinion in *Palermo v. United States*, 360 U.S. 343:

"Thus the Government will not produce documents clearly beyond the reach of the statute for to do so would not be responsive to the order of the Court."
360 U.S. at 354.³³

³³ We do not contend at all that the Government may unilaterally determine in every case whether an attorney's notes constitute a "statement", and we do not concede that an attorney's notes must always be delivered for inspection. Certainly Section 3500 was not intended to forbid government counsel to use a reasonable amount of judgment. It is when he is doubtful that he should deliver the notes for inspection.

The petitioner insinuates that the attorneys' notes may not have been produced because counsel believed that section 3500 did not apply to them. But the Hearing Member's ruling of February 15, 1961 (2 J.A. 26) states, "the record is clear that the order to produce and the procedure established, including the submission of questionable documents for *in camera* determination, were understood to cover not only F.B.I. reports but also any documents containing information given by a witness to a government attorney which was relevant to the witness's testimony (see, e.g., tr. 4576, 4578, 4581)." And he added in a foot-note, "But the record shows understanding that the standards for production were solely those of section 3500 and not the reasons for or circumstances under which a statement was taken" (2 J.A. 26).

Petitioner also urges that at the hearing sufficiently detailed and persistent inquiry was not made as to the existence of attorneys' notes. It points out that at a criminal trial in the Summer of 1963 reports of attorneys' interviews with two of the witnesses who testified in this proceeding were produced.^{33a}

The ruling of February 15, 1961, shows in detail that with respect to seven of the witnesses for the Attorney General the petitioner did not even ask them whether attorneys who interviewed them took notes, so there was no basis for inferring that there would be notes which might be statements.³⁴

When the petitioner moved for the production of attorneys' notes, counsel for the Government made three statements:

(1) As to witness Gardner that all the statements in the Attorney General's possession within 3500, had been produced "There is nothing else in the files of the Government, and I assure the Board that the files of the Government have been searched, that in any way comes within Section 3500" (2 J.A. 28-29).

^{33a} Those documents are available for inspection. The trial court in Denver decided they were not 3500 statements.

³⁴ Petitioner urges a "reasonable supposition", but that possibility is rebutted by the statements in the Ruling.

(2) As to the witness Fikes, "There is no such material in the hands of the government" (2 J.A. 29).

(3) As to the witness Rasmussen, considerably later than counsel's interview with the witness a "witness sheet" was prepared from various sources, including counsel's memory (2 J.A. 29).³⁵

On the basis of these statements of counsel the Hearing Member concluded that he could not find that there were any relevant documents in counsel's possession reflecting interviews with any of the witnesses by government attorneys (2 J.A. 29).

Certainly in view of the clear understanding of the parties that the requirement of the production for inspection of questionable documents extended to attorneys' notes, the Hearing Member could reasonably conclude that sufficient inquiry had been made and that he was entitled to rely on the statements of counsel.

There is no claim that any statements signed or written by the witnesses were withheld. Petitioner's other contention covers the "interview reports" of government agents who interviewed six witnesses, Rasmussen, Dirdak, Bush, Everingham, Kirby, and Hain,³⁶ and the agents' notes. Those witnesses had been interviewed by eight F.B.I. agents and two I. and N. agents, stationed in places as widely scattered as Chicago, Los Angeles, Salt Lake City, and Butte.³⁷

All of the affidavits stated that the agents destroyed their notes of interviews in accordance with normal practice

³⁵ The legislative history discloses that notes made by an attorney preparing for trial were not intended to be made producible (103 Cong. Rec. 15931, 16118), unless, of course, they reflected the witness's own words to such an extent as to be a "statement" within 3500.

³⁶ We have not been able to find that any of these six testified to Union action or activity during the period 1952-1955.

³⁷ In each case the affidavits, which will be before the court, show the agent's station, the place and the date of the interview.

after using them to write or dictate his report. All state that no verbatim transcript of what the witness said was made and that the reports which petitioner seeks were prepared a considerable time after the interview. The Hearing Member found that, "The affidavits are clear that no effort was made by the interviewing agents to include the whole oral statement or substantially verbatim recitals of the witnesses words in the notes that were taken or in the reports that were prepared", and he held that the reports were not producible "statements" (2 J.A. 25, 26).

The procedure adopted was reasonable and within the discretion of the trier of the facts.

In *Palermo v. United States*, 360 U.S. 343, the Court said, "It is the function of the trial judge to decide, in the light of the circumstances of each case, what, if any, evidence extrinsic to the statement itself may or must be offered to prove the nature of the statement." (360 U.S. at 354-355). This statement was repeated in *Campbell v. United States*, 365 U.S. 85, cited by petitioner. And in *Campbell* the Court describes the inquiry as "not an adversary proceeding in the nature of a trial controlled by rules governing the allocation between the parties of the burdens of proof or persuasion," and as "simply a proceeding necessary to aid the judge to discharge the responsibility laid upon him to enforce the statute" (365 U.S. at 95).

See also, *Bary v. United States*, 292 F(2d) 53, 59, (C.A. 10).

It is but quibbling to argue, as petitioner does, that affidavits can never be "evidence" within *Palermo* and *Campbell*.³⁸ It is very common in federal procedure for the court to use affidavits to determine whether there is a real question of fact which should be decided by calling witnesses. See, 24 *Federal Practice Digest*, Federal Civil Procedure, §1833.

"Final decision as to production must rest, as it does so very often in procedural and evidentiary matters, with

³⁸ The cases cited by petitioner do not go that far.

the good sense and experience of the district judge." *Palermo v. United States*, 360 U.S. 343, 353.

The rule under 3500 is certainly not that in every case and automatically whenever there is a demand for "statements" the trier of the facts must always call the interviewing agents and interrogate them and subject them to cross-examination as to how they interviewed the witness. "Substantially verbatim" in 3500 must mean more than a few key words or phrases; to read it as petitioner does would mean that in every case the court would have to interrupt the trial and go off on a number of collateral issues, how many words, in quotation marks or not, the agent can now remember that the witness used, how far his final report, written or dictated contains, to his memory, just the words he used in his notes, and so on.

In *Campbell I* (365 U.S. 85) it was a question of one witness and one agent. The agent was stationed in the same city in which the district court was held, and, probably, in the same building. Here we are dealing with six witnesses, and ten agents stationed in various and distant parts of the country. In *Campbell* there was a real question, raised on the examination of the witness, who testified both ways, as to whether he signed what the agent wrote and whether he approved it. In the instant case there was no effort to lay any such foundation. What petitioner asked was that the Hearing Member halt the main proceeding, and go off on a collateral inquiry with respect to each of the ten agents involved, as to how nearly their notes were "substantially verbatim" (though the affidavits stated no effort was made to attain such a result), just on the basis that by summoning and interrogating ten agents, something might turn up. No real effort, if any, was made by examination of the witnesses who took the stand to find how many notes the agents took or by what method.³⁹

³⁹ There does not seem to be any claim that in any instance the witness approved the agent's notes on his report.

According to *Palermo*, the trial judge is to decide, "*in light of the circumstances of each case, what, if any, evidence extrinsic to the statement itself may or must be offered.*" (Emphasis supplied) "Discretion" means there is not a hard and fast rule, and also, that in some cases the judge may call, or have called, witnesses, and that in other cases he may take other measures, such as using affidavits. On such an inquiry the judge may properly take into account considerations like the delay that will be involved, the convenience and the expense to the parties, and the likelihood that anything will be turned up which will affect the case in a substantial way.⁴⁰

Ten interviewing agents having sworn individually that their interview notes were destroyed in accordance with normal practice (which implies good faith), it is difficult to see what useful result could have been accomplished, by calling the ten agents for cross-examination along that line.

It is true that "almost everything is evidence of something, but that does not mean that nothing can ever be destroyed." *Killian v. United States*, 368 U.S. 231, 242.⁴¹ The action of the Hearing Member was not "clearly erroneous." *Campbell v. United States*, 373 U.S. 487, 493-495.

⁴⁰ Petitioner would require the trier to push the inquiry to absurd lengths. It says that, "even if the notes were destroyed, if oral examination *could* develop that the notes were or *might* have been statements, then the interview reports, *even if not themselves statements*, would have to be produced as secondary evidence of the notes" (emphasis ours).

⁴¹ In *Killian* the case was remanded because all that was before the Supreme Court were the representatives of the Solicitor General of the United States was that the agents' notes had been destroyed; there was nothing in the record to support or disprove the statement.

CONCLUSION

The Order of the Board should be affirmed.

Respectfully submitted,

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PETITIONER'S REPLY BRIEF

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,135

INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS,
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD,
Respondent

On Review of Order of the Subversive Activities Control Board

United States Court of Appeals
for the District of Columbia Circuit

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Respondent

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PETITIONER'S REPLY BRIEF

I. The non-compliance with the limiting function of
the three-year provisions.

Respondent does not dispute our demonstration (Pet. Br. 20-24) that the Board's Report rests primarily, indeed virtually exclusively, on evidence of alleged membership in or aid to the Communist Party at times prior to July 28, 1952, the beginning of the three-year period by the Board's calculation. In fact, respondent confirms our view since the evidentiary discussions of its brief are also principally based on antecedent events, and it expressly claims a presumption that Party membership in 1943 or 1944 continued into the three-year period (Resp. Br. 18 ftn. 4). Respondent justifies this course by citing (Resp. Br. 34) the Communist Party case, which sustained Board reliance on pre-Act evidence in finding the Communist Party to be a Communist-action organization.

The Party decision involved section 3(3) of the Act, which does not contain the three-year provisions of section 3(4), which is involved here.

To apply the doctrine of the Party case to section 3(4A) stultifies the three-year provisions.

The function of the three-year provisions is to limit the Board's inquiry^{1/} to the furnishing of aid to the Communist Party within the three-year period, and to require that the Board's ultimate determination rest on adequate evidence of aid rendered within the period. This follows from the legislative history (Pet. Br. 19-20) and from the need to give meaning to the three-year provisions. If the provisions do not have such a limiting function — if the Board is free to mix together, as it did, a bushel of pre-period evidence with a granule of in-period evidence; if it may infer a continuation into the three-year period of prior membership in or aid to the Communist Party — then the Board may proceed under section 3(4A) exactly as it does under sections 3(3) and 3(4), which contain no three-year provisions in defining action and front organizations.

The Act requires a present determination as to all three types of organizations — action, front and infiltrated (Pet. Br. 17). As to the first two types, the Act supplies no guide to the evidentiary period from which the present determination is to be derived. As a result, the Party case permitted the Board to go back to the beginning of the accused organization's history. But in infiltrated cases, the Act limits to three years the period from which inferences as to the present may be drawn so far as the giving of aid to the Communist Party is concerned. If the three-year

1. The aid which must be shown is, of course, two-fold: under the control component of section 3(4A), aid actively rendered by the organization's directors; under the means component, aid rendered by the organization itself.

provisions do not mean this, they mean nothing. And that is what the Board has made them mean.

The reliance on the Party case also overlooks a difference in issues. In Communist Party v. S.A.C.B., 367 U.S. 1, 69, the Court held, in an action case under section 3(3), that pre-Act evidence was relevant "[w]here the current character of an organization and the nature of its connections with others are at issue." But the three-year provisions in section 3(4A) are not attached to the words "substantially directed, dominated or controlled." Instead they apply in "(A)" to the individuals who control the organization, and in "(B)" to the giving of aid by the organization. What is at issue, therefore, is not something so general as the "character" of an organization or individuals or the "nature" of their connections with others, but something more specific and more capable of being isolated within a discrete time period -- namely, the conduct of giving aid or support to the Communist Party within the three-year period. Conceivably one might cite the Party case as a precedent that evidence of pre-period matters is relevant to help determine who controls the Union. But it is obtuse to cite the case as establishing that such remote evidence may be used to determine whether the directors of the Union or the Union itself aided the Party within the three-year period.

II. The alleged aiding of the Communist Party by members of the Union's International Executive Board.

A. The absence of essential findings.

We pointed out in our principal brief that the Board never made any finding that any director of (or anybody else in) the Union actively engaged in giving aid or support to the Communist Party during the three-year period.

Still less did the Board ever identify any conduct by a Union director which constituted such aid. The most the Board did was to find that individuals were (at unspecified times) members or affiliates of the Communist Party, a status which is not the equivalent of actively giving aid to the Party. It followed that the Board's Report was deficient. (Pet. Br. 30-32.)

Respondent does not deny, and seems to recognize (Resp. Br. 14, 24), the necessity of particularized findings of aiding. On the other hand, it ignores our demonstration that such findings were not made. In its entire brief it claims only one instance of such a finding, stating (Resp. Br. 15, emphasis supplied), "On the evidence the Board could, and did, infer that Dennis was actively engaged in aiding and supporting the Communist Party." The brief supplies no annotation to the Report to support the assertion that the Board did so infer, and the indisputable fact is that the Report made no such finding as to Dennis. See 1 J.A. 35-38, containing the Report's discussion of Dennis.

As to other individuals, respondent alleges not that the Report found aiding, but that the Board "could only find" (Resp. Br. 16) or the evidence showed (Resp. Br. 18, 19, 20, 21, 25, 30, 31) aiding. But of course the Board cannot now invent for the purposes of the litigation essential findings which it did not make in the administrative proceeding. "The courts may not accept appellate counsels' post hoc rationalizations for agency action." Burlington Truck Lines v. United States, 371 U.S. 156, 168-69. And see S.E.C. v. Chenery Corp., 332 U.S. 194-96.

B. The inadequacy of the evidence of aiding by members of the International Executive Board.

An examination of respondent's present claims of aiding by members of the Union's International Executive Board seems to confirm our suggestion (Pet. Br. 32) that the Report omitted findings of aiding because the evidence could not support such findings. We maintain our position (Pet. Br. 61-62) that "aid or support" in section 3(4A) refers to aid of the allegedly pernicious objectives of the Communist Party. But for the purposes of the review which follows, we will show that even under an unrestricted definition of aiding, the evidence of aiding during the three-year period is inadequate. We will also adopt for purposes of our review the three-year period claimed by respondent -- namely, July 28, 1952 to July 28, 1955.

1. Raymond Dennis

In claiming that Dennis aided the Communist Party, respondent cites only two matters post-dating July 28, 1952.

First, respondent states (Br. 15):

"About January of 1953, he [Dennis] explained to Gardner that it was the Communist Party which had assigned Edith Lumer, the wife of an underground Party leader, to work in his office."

Respondent then asserts (Br. 15) "the putting of Party members (or the wife of a member), on the Mine-Mill payroll" was aid and support to the Communist Party.

2. We need not consider respondent's discussion of Travis (Resp. Br. 20-21). Travis was not a member of the International Executive Board on or after July 28, 1955, and therefore it is irrelevant to the control component whether or not he aided the Party during the three-year period. Respondent does not reply to our demonstration that the Board erred in relying on evidence about Travis, Wilson (also an ex-director), and persons whose employment as staff members terminated before July 28, 1955 (Pet. Br. 23). Yet it perpetuates the error by featuring Travis in its brief.

The assertion constitutes a misrepresentation. The Board found (1 J.A. 37-38), and Gardner testified (Tr. 4808), that Dennis told Gardner that "the Communist Party had assigned" Mrs. Lumer "to the job" which she held "in the Union office [not, as respondent insinuates, Dennis' personal office] in Cleveland." There was no finding and no evidence that Dennis was the one who made the alleged Party assignment effective by hiring Mrs. Lumer. Therefore, there is no basis for claiming that Dennis put Mrs. Lumer on the payroll or that he aided her and thereby the Party.

The other claimed instance of aid by Dennis to the Communist Party after July 28, 1952 is stated as follows (Resp. Br. 15-16):

"Dennis was a Committee chairman at conventions in 1952 and later (2 J.A. 44, 52), and the record of the proceedings of those conventions show that at no time did he oppose or vote against any of the pro-Soviet and anti-United States resolutions the conventions passed or the resolutions condemning legislation and United States action in the internal security field."

As to this passage, the following observations apply.

(a) It is impossible to see how a failure to oppose or vote against something constitutes what the control component of section 3(4A) requires, active engagement in aiding the Communist Party.

(b) The passage's description of Union convention resolutions as "pro-Soviet and anti-United States" is false, nor is condemnation of legislation and action "in the internal security field" aid to the Communist Party. See infra, pp. 10-11, 18-20.

(c) Dennis had a moral obligation to take positions on proposed resolutions according to his beliefs as to their merits. There is no evidence that in disregard to this obligation he took positions simply because they were favored by the Communist Party. We do not see how the bona fide exercise of his obligation can constitute aiding the Party.

2. Irving Dichter.

Although respondent cites much material that we consider irrelevant, it also cites evidence credited by the Board which could support a finding, which the Report did not make, of aiding by Dichter during the three-year period (Resp. Br. 16-17).

3. Asbury Howard.

Respondent makes one claim of aiding by Howard within the three-year period and another after the period.

The in-period claim is (Resp. Br. 18): "In his votes and actions as an officer of Mine-Mill he went along with the bloc of Communist members and sympathizers. . . ." Respondent does not annotate this assertion to the record, and there is no evidence that Howard "went along" with anybody in place of using his own independent judgment. The claim is also irrelevant for the reasons already stated regarding a similar assertion about Dennis.

Respondent also asserts that Howard aided the Party by conferring in 1958 with Fikes and Pettis Perry. Since the conversations occurred after the end of the three-year period defined by respondent, they cannot constitute aiding within the period. In any event, the conversations were not aid to the Communist Party, unless one adopts the untenable theory that talking to a Party official ipso facto constitutes active engagement in aiding the Party. (For the testimony on the conversations, see Tr. 5080-83. For the Report's version, see 1 J.A. 41-42, Pars. 53(c), (d) and (e). See also Pet. Br. 35-36.)

4. Alton Lawrence.

The only claim that Lawrence aided the Party after July 26, 1952, is that, "As a Board Member Lawrence went along with the Party bloc" (Resp. Br. 18). The

8.

claim is not annotated to the record and is as unsupported and irrelevant as the like claim made concerning Howard.

5. Albert Pezzati.

The one claim of aiding after July 28, 1952 is that at the Union's 1953 convention Pezzati "spoke against a resolution that the pro-Soviet policy of the Union paper should be changed," by saying that employers do not like to have the Union membership receive information from sources other than the big-business-dominated press (Resp. Br. 19-20).

The description of the resolution against which Pezzati spoke is an unconscionable distortion, as appears from the text of the resolution (MM Ex. 126, pp. 136-37), quoted in the Board's Report (1 J.A. 105), as follows:

"RESOLVED, that the official organ of the International Union shall reflect social, economic and political thinking of our Union and avoid partisan positions on international and political questions."

As for Pezzati's comment on the resolution (which many persons would consider a truism), it is ridiculous to consider it aid to the Communist Party. And again we say that aiding the Communist Party cannot be found merely from positions taken by a Union officer on resolutions submitted for convention action.^{3/}

6. Chase Powers.

Respondent claims (Br. 21) that Powers aided the Party by a conversation with Gardner in 1953. According to Gardner's testimony, Powers on that occasion

3. As we showed in our principal brief (pp. 36-37), the Board's finding that Pezzati had been a member or affiliate of the Communist Party rested on a mixture of hearsay and irrelevancies. Respondent's brief discreetly avoids mentioning the hearsay, and claims that the Board could (not "did") infer Party membership from conversations in 1954 between Pezzati and Gardner "which were couched in terms of one Communist talking to another about Party matters" (Resp. Br. 19). The conversations (described at 1 J.A. 44) do not, in our opinion, fit the description. In any event, it is irresponsible to assert Communist Party membership on the basis of respondent's subjective linguistic reactions.

told Gardner that charges had been filed in the Communist Party against one Hansen, and that Gardner should isolate Hansen from the miners so that he could more easily be expelled from the Party (1 J.A. 45-46; see Pet. Br. 37-38). This was not aiding, if only because there is nothing to show that Powers' request was in accord with the Party's desires or made at Party direction.^{4/} For all that appears, the Party may not have wanted the charges prejudged and may never have expelled Hansen. Nor can this isolated conversation measure up to the section 3(4A) requirement of having "been actively engaged in giving aid or support" to the Communist Party.

The only other claim of aiding by Powers in the three-year period is that while he was on the Executive Board he "worked harmoniously" with Dennis, Dichter, Howard, Lawrence, Pezzati and Travis (Resp. Br. 21). Again the assertion is not annotated to the record; again it is unsupported by evidence, there being nothing to show whether Powers worked harmoniously or discordantly with the others. Nor is it reasonable that working harmoniously with fellow Executive Board members should be held aid to the Communist Party.

7. Ernest Salvas.

Respondent admits that there was no evidence that Salvas ever was a member of the Communist Party. It states no instance of claimed aid by him to the Party at any time, saying only, "Petitioner cites no instance in which [Salvas] took or urged any action contrary to what the Communist members of the Board wanted." (Resp. Br. 22.)

The theory seems to be twofold: (1) the burden of proof is on petitioner;

4. The same is true of the one claim of aiding after the three-year period, a conversation with Fikes in 1950 (Resp. Br. 21; 1 J.A. 46; Pet. Br. 38).

(2) merely being a member of the Union's International Executive Board constitutes active aiding of the Communist Party. Respondent is obviously wrong on both counts.

C. John Clark.

Respondent admits (Br. 22) that Clark was not shown to have ever been a member of or affiliated with the Communist Party. It claims aiding after July 28, 1952 in two respects.

(a) It claims (Resp. Br. 22-23) that Clark aided the Party by expressing views "in opposition to the foreign policy of the United States, in opposing the Federal laws designed to preserve the national security, and in opposition to moves within the Union to bar Communists from holding positions of leadership and trust."

The expressions referred to which occurred within the three-year period consist of a comment by Clark on a speech made by Karen Morley, a well-known actress who, as a guest speaker at the Union's 1952 convention, expressed revulsion at the carnage of the Korean War (2 J.A. 45-50); parts of Clark's presidential reports to the Union's 1953 and 1955 conventions (MM Ex. 246, pp. 235-42, excerpted at 2 J.A. 57-60; 2 J.A. 64-67), and a commendation of a convention committee which called for increased legislative action in certain fields (2 J.A. 56-57).

Respondent asserts (Br. 23 ftn. 7) that the "merits or demerits of the positions taken by Clark are not the issue," and, "The question is the extent to which he followed the Communist line. . . ."

We invite the Court to read Clark's expressions. There is no evidence that they followed anybody's line but Clark's. Respondent's implicit premise is that all left-wing opinions, no matter how meritorious, are ipso facto "the Communist line" and that their expression contributes aid to the Communist Party. We believe that the premise offends both reason and the First Amendment. Moreover,

respondent's thesis makes the mistake of erecting "non-deviation," which is relevant only as a test for the existence of control of an organization by outsiders, into a test for the existence of aiding of the Communist Party by persons within the organization. See Pet. Br. 75-76.

(b) The other instance of in-period aid attributed to Clark is that he effected, or acquiesced in, Gardner's discharge from Union employment after the latter "became obnoxious to the Communist Party" (Resp. Br. 23-24). As our principal brief pointed out (pp. 57-58), Gardner's discharge is significant only if he was removed because of Party disfavor. Gardner worked under Salvas, who was never a member of the Communist Party (1 J.A. 55). Salvas testified that he recommended Gardner's removal because Gardner was causing dissension, was not trusted, and was hurting Salvas and the Union (1 J.A. 117). In the face of this testimony, the Board did not find that Gardner had been discharged from the Union because he "became obnoxious to the Communist Party." It concluded, instead that "the record is conflicting on exactly who fired Gardner and why," and did not resolve the supposed conflict (1 J.A. 117). Thus respondent now fabricates an insinuation that the Report did not and could not make.

9. Recapitulation.

On July 28, 1955, the date on which the Attorney General filed his petition, there were eleven members of the Union's International Executive Board. Since these individuals were the Union's directors, the questions under the control component are these:

(a) Did a majority of the eleven actively engage in aiding or supporting the Communist Party between July 28, 1952 and July 28, 1955? If the answer is yes, the evidence satisfies the control component. If

the answer is no, we pass to the next question.

(b) If a minority actively engaged in such aiding, did they control other Executive Board members in sufficient number so as to be able to control the Executive Board and through it the Union?

Of the eleven directors, there are three -- Chavez, Larson, and Wampler -- whom respondent's brief does not even list as possible aiders. The brief does list Salvas and Lawrence, but, as we have seen, the claim as to them amounts to nothing more than that they were members of the Executive Board. (We are mystified as to why respondent omitted Chavez, Larson and Wampler, who were in the same status.) And the only claim of in-period aid by Howard is the same. As to Pezzati, the only claimed instance of aid is a fabrication -- resting on a false description of a resolution against which he spoke.

We could stop here and answer the first question in the negative, having accounted for seven of the eleven members of the International Executive Board. We could also at this point answer the second question negatively, since there is not an iota of evidence that any of these seven was controlled by anybody else on the Executive Board.

But we can proceed further. As to Dennis, the only claims of aiding within the three-year period are the misrepresentation that he hired Mrs. Lumer and the palpably inadequate assertion that he did not oppose various Convention resolutions.

As to Clark there are two claims of in-period aiding. One -- the discharge of Gardner -- rests on a false insinuation that Gardner was discharged because of Communist Party disfavor. The other consists of nothing more than that Clark expressed left-wing positions.

As to Powers, the claim of in-period aiding amounts to nothing more than that he was a member of the Executive Board plus one conversation. This conversation did not, in our view, constitute aid to the Communist Party. But if it did, what is impressive is that the aid over a three-year period was so minute and tenuous.

III. Staff Members.

Since the control component requires a determination of whether the Union's directors actively engaged in aiding the Communist Party, it is elementary that it is necessary first to decide who the Union's directors are. The Report found that the Union was directed "by the individuals who constitute the International Executive Board, assisted by the staff members" (1 J.A. 33). Directors commonly have assistants, but it does not follow that all (or any) of their assistants are directors. And the Report's evidentiary findings did not support, but negated, any assumption that the staff members are directors of the Union (Pet. Dr. 43).

Respondent's answer (Br. 26) is that, "In a large organization, operating on a nationwide scale, the staff, and particularly the headquarters staff, are necessarily a part of the 'effective management.'" The statement is palpably unsound. Whether employees are managers depends on whether they exercise managerial prerogatives, such as the making of policy decisions, the hiring and firing of other employees, etc. It is untrue that any particular staff member necessarily exercises such prerogatives in large or small organizations. It is even more farfetched to assume that all staff members necessarily are managers. Under the Union's constitution, managerial prerogatives are reserved to the International Executive Board. None is assigned to the staff, and there is no evidence or findings that any staff members, let alone all, exercised

those prerogatives. Moreover, the function of most of the staff members was to service the local unions by supplying technical assistance (1 J.A. 31, 135-36). The locals have their own officers and local policy makers. Hence the "nationwide" operating of the Union did not require staff members to be managers.

We need not, therefore, examine respondent's discussion (Resp. Br. 27-31) of the three staff members it picks as examples. It is interesting, however, that respondent does not contest our demonstration (Pet. Br. 45-50) of the fraudulent character of the Report's list of 45 staff members as members of the Communist Party. Respondent's ignoring of Board errors does not, however, make them disappear.^{5/}

IV. Scienter.

Under section 13 A (e)(1), Communist Party membership of an organization's managers is relevant only if the individuals have "knowledge of the nature and purpose" of the Communist Party. We argued (Pet. Br. 53-54) that the knowledge referred to could only mean knowledge of the Party's alleged character as a Soviet agent seeking pernicious goals. Respondent seems to contend that the necessary scienter was knowledge "that the Communist Party is the Communist Party" and (or perhaps "or") knowledge that the Party "had the 'purpose' of working in and through labor unions" (Resp. Br. 42). Since we cannot fathom the reasoning by which respondent arrived at this proposition, we can comment only that it seems frivolous on its face.

5. Similarly, respondent's brief offers no justification for, and does not mention, the Report's error of relying on findings of alleged Communist connections of clerical employees (Pet. Br. 50-52).

Whatever the requisite scienter is, respondent fails to defend the Report's irresponsible course of making its finding en masse (Pet. Br. 52-53), unless it means to do so by its assertion (Br. 41 ftn. 26), "Knowledge of the nature and purposes of an organization may be inferred from the fact of membership." The two Circuit Court decisions cited as authority for the pronouncement belie it. Frankfeld v. United States, 198 F. 2d 679, 686 (knowledge of Party's purposes established by defendants' high Party positions and "active part taken by them in its work"); United States v. Dennis, 183 F. 2d 201, 230 (knowledge of Party advocacy inferred from membership on Party's top governing bodies and holding of other high offices for many years). So do Nowak v. United States, 356 U.S. 660, 666; Maisenberg v. United States, 356 U.S. 670, 673; Castelum-Quinones v. Kennedy, 374 U.S. 469.

V. Alleged Aid to the Party by the Union.

A. Non-deviation.

Respondent asserts (Br. 37) that non-deviation is so probative "that it is inconceivable that Congress meant to exclude it from consideration." Respondent cites as authority a statement of "a Senate subcommittee" which set forth three tests for identifying Communist-dominated unions, including "unerring conformity of the union's policies to the Communist Party line in vogue" (Resp. Br. 36).

The subcommittee statement did not relate to the Act, did not come from the committee which reported the bill, and is not part of the legislative history of the Act.^{6/} Nor is the issue under section 3(4A) whether a union is

6. The report referred to was a study issued by a subcommittee of the Senate Committee on Labor and Public Welfare (100 Cong. Rec. 14134). The bill which became the Communist Control Act (S. 3706, 83rd Cong., 2d Sess.) was reported by the Senate Committee on the Judiciary. 100 Cong. Rec. 9708, 14129; Sen. Rep. 1709, July 6, 1954, 2 U.S.C. Cong. & Adm. News (1954) 3145.

Communist dominated. Instead, the issue is whether the union's directors and the union itself aided the Communist Party within the three-year period. If a union is Communist-dominated, it should be proceeded against under the Communist-front provisions of the Act, not the infiltrated provisions. Respondent's incredulity that non-deviation was purposely omitted from the infiltrated provisions is due to its failure to read our demonstration (Pet. Br. 74-77) that non-deviation, which is a test for outside control, does not fit infiltrated cases (especially one where the control was admittedly in the hands of insiders—the constitutional officers), as contrasted to action and front cases. Thus the Act's omission of non-deviation as a test of infiltration was not an oversight.^{7/}

E. The obscurity of the findings.

We objected (Pet. Br. 59-60) that the Board's Report failed to identify the basic findings and reasoning from which it derived its conclusions on the means component. Respondent now cites instances which it claims constituted Union aid to the Communist Party (Resp. Br. 38-39). But there is nothing in the Report to show that the Board made the same judgment as to the significance of the cited matters. Hence the present belated claims are unavailing.^{8/} See supra, p. 4.

7. In any event, non-deviation was not established (Pet. Br. 77). The Union also fails the other two tests advanced by the same Senate sub-committee. The Union never called any strikes "designed to implement the interests of Soviet foreign policy," nor was there "systematic participation of Communist Party functionaries in determination of union policy" (see Resp. Br. 36).

8. In our principal brief, we pointed to other key findings and conclusions which were intolerably obscure (Pet. Br. 29-32, 44, 52-54, 65). Respondent's blanket denial (Resp. Br. 42-43) is not responsive because it carefully fails to examine our specific objections.

C. The inadequacy of the evidence.

Respondent lists in two paragraphs (Br. 38-39) what it considers specific instances of Union aid to the Party.

The first paragraph claims that "the Communist officers and functionaries" of the Union aided the Party "by discussions with each other and with Party leaders" on Union affairs.

With one exception (we cannot identify the conversation referred to by the citation to 1 J.A. 104), the annotations in this paragraph all refer to Board findings based on testimony of Morales or Gardner concerning discussions of Union affairs in a Communist Party group in Montana which included some Union employees. There is nothing to show that the conversations eventuated in Union action. The Union employees in the group were not Union directors. In their conversations they were not acting for the Union or as Union employees, but as Party members. The situation was localized.

Respondent's second paragraph cites positions taken by the Union or officers of the Union. Limiting ourselves to positions taken within the three-year period, the instances referred to are the following.

(a) Respondent cites "Pezzati's speech at the 1953 convention defending the pro-Communist line of the Union paper" (Resp. Br. 30). We have already seen (supra, p. 8) that this characterization of Pezzati's remarks is false.

(b) Next respondent cites the defeat at the 1955 Union convention of a proposal described as one "which would bar Communists from office in the Union" (Resp. Br. 38). Rejection of such a proposal would constitute not aid to the Communist Party but rather adherence to the democratic principle that a union's members should be free to select their own leaders. In any event,

respondent's description of the rejected proposal is, to say the least, disingenuous. A proposal in 1955 to bar Communists from Union office would have been superfluous, considering that section 9(h) of the Taft-Hartley Act was then in effect and the Union was filing non-Communist affidavits of its officers under that section (Pet. Br. 22-23). That the offered resolution actually proposed was "that no person will be on the ballot for any job with the I. U. M. M. & S. W. who has belonged to or belongs to any subversive organization" (MM Ex. 126, p. 194, emphasis supplied; the resolution is accurately described in the Report at 1 J.A. 117, Par. 166.) Obviously such a proposal would be objectionable to anybody who has the slightest respect for civil liberties. One of the rank-and-file delegates who opposed it in the floor discussion observed (MM Ex. 127, p. 195):

"What would we do? Would we take the Attorney General's word for what is subversive or some three or four hundred organizations that have been branded as subversive."

(c) Finally, the paragraph refers to resolutions adopted at Union conventions as instances "of use of the Union for purposes of Communist propaganda" (Resp. Br. 38-39).

The Union held three conventions during the three-year period — in September of 1952 and 1953 and in March of 1955 (MM Exs. 125, 126, 127). (There was no convention in 1956.) Of the many resolutions adopted by these conventions, respondent refers to the following:

(a) The 1952 convention adopted a resolution urging a campaign of protest against what it considered an attack on the Union by Senator McCarran and the Senate Internal Security Subcommittee which he headed (MM Ex. 125, pp. 81-82). The resolution contained a paragraph calling for repeal of the Taft-Hartley, Smith and McCarran Acts "which inspire and foster the anti-labor

activities that these committees carry out" (id. p. 82).

Respondent's representation (Br. 38-39) that the resolution was an example of the officers using the Union to spread Communist propaganda (an allegation which repeats the Report's fatuous brainwashing theory -- see Pet. Br. 70-74) is belied by the facts that (1) the resolution combined proposed resolutions to like effect submitted to the convention by 16 local unions (id. pp. 73-81);^{9/} (2) in the floor discussion the resolution was enthusiastically supported by 28 delegates from local unions (id. pp. 83-84, 97-107). This reaction was occasioned by the fact that Senator McCarran and his subcommittee had scheduled hearings on the Union to begin a month after the convention (id., p. 73). In short, the convention resolution represented the desires of the Union membership, which did not have to be mesmerized by the Union's officers to resent an attack on their organization.

(b) The 1952 convention also adopted a resolution (id., p. 135) which is described in the Board's Report (1 J.A. 102) as "a resolution for a cease fire in Korea." To call this Communist propaganda is obviously a libel on President Eisenhower, who announced a few weeks later that if elected he would go to Korea to negotiate a cease-fire.

(c) The 1953 convention adopted a section of President Clark's Report entitled "Peace Without Depression" (MM. Ex. 126, pp. 161, 242-246), which the Board's Report found objectionable because it "criticized embargo on goods to Russia, Eastern Europe and China" (1 J.A. 106; see MM. Ex. 126, p. 246).

(d) The 1953 convention called for repeal of the Taft-Hartley Act and

9. With characteristic inaccuracy, the Board's Report states that the adopted resolution condemned, among other things, the FBI and the government of Spain (1 J.A. 102, Par. 134). In fact, those two institutions were not mentioned in the adopted resolution. Of the anti-McCarran resolutions submitted by the local unions, but not adopted by the convention, one contained criticism of the FBI (MM Ex. 125, p. 75), and another had a statement that Senator McCarran's record "places him in the corner with. . . Francisco Franco. . . ." (id., p. 80).

the "defeat of the Butler-Goldwater-Rhodes-McCarran labor legislation philosophy and all measures connected with that philosophy" (2 J.A. 56).

(e) The 1955 convention adopted that part of President Clark's Report which dealt with civil liberties (MM. Ex. 127, pp. 84, 87). That part criticized the Communist Control Act, Smith Act prosecutions, the Department of Justice, etc. (2 J.A. 64-67).

(f) The 1955 convention also adopted a resolution for repeal of the Taft-Hartley and Communist Control Acts (MM. Ex. 127, p. 162).

The short of the matter is that respondent considers criticism of the Department of Justice and of the legislation enforced by the Department's Internal Security Division to be Communist propaganda in aid of the Communist Party. As we have already indicated (supra, pp. 10-11), the position is unsound.

VI. Production of Interview Reports.

The attorneys representing the Attorney General had a duty of candor to inform the hearing officer whether they had in their possession attorneys' interview reports with Department witnesses. They could not avoid this duty on a theory that they could unilaterally decide that such interview reports did not qualify as statements under the Jencks statute; any such judgment had to be made by the hearing officer after in camera inspection, and, if necessary, the taking of extrinsic evidence. Pet. Br. 81-82, 84, 86, and cases there cited. Respondent is egregiously wrong in claiming (Br. 48 fn. 33) that the attorneys could "use a reasonable amount of judgment" in deciding that interview reports did not qualify.

We pointed out in our principal brief (pp. 84-86) that there was good reason to believe that the government attorneys had breached their duty of

candor, not merely by withholding documents, but also by affirmatively misleading the hearing officer into believing, contrary to fact, that no attorney interview reports existed. Therefore we asked (Pet. Br. 86) that the government inform the Court of the facts. By not accepting our invitation, the government has again breached its duty of candor — this time to the Court. The government's studious silence also fortifies our view that witness interview reports actually were in the possession of the government's attorneys when the demands for production were made.

We submit that the Court should require the government to state whether such interview reports were in existence then, whether they are still in existence, and if not what happened to them. Any such reports will, of course, have to be produced to the Board.

VII. Constitutionality.

1. American Communications Association v. Douds, 339 U.S. 382, does not support respondent's position (Resp. Br. 43-44). Douds rested its holding on the existence of evidence that political strikes had been fomented by Communists in union office (at 388). There is no evidence, nor is it reasonable to suppose, that political strikes have been, or are likely to be, called by union officers who have merely given aid to the Communist Party within a three-year period -- particularly when the aid consists of things like criticisms of the Department of Justice and some of its favorite legislation.

Nor can the Act be justified (Resp. Br. 45) as being in "the national interest. . . in diminishing the influence of the Communist Party in the labor movement." The First Amendment prohibits Congress from assuming a guardianship over the minds of persons in or out of the labor movement so as to

protect them from being influenced by the Communist Party or anybody else.

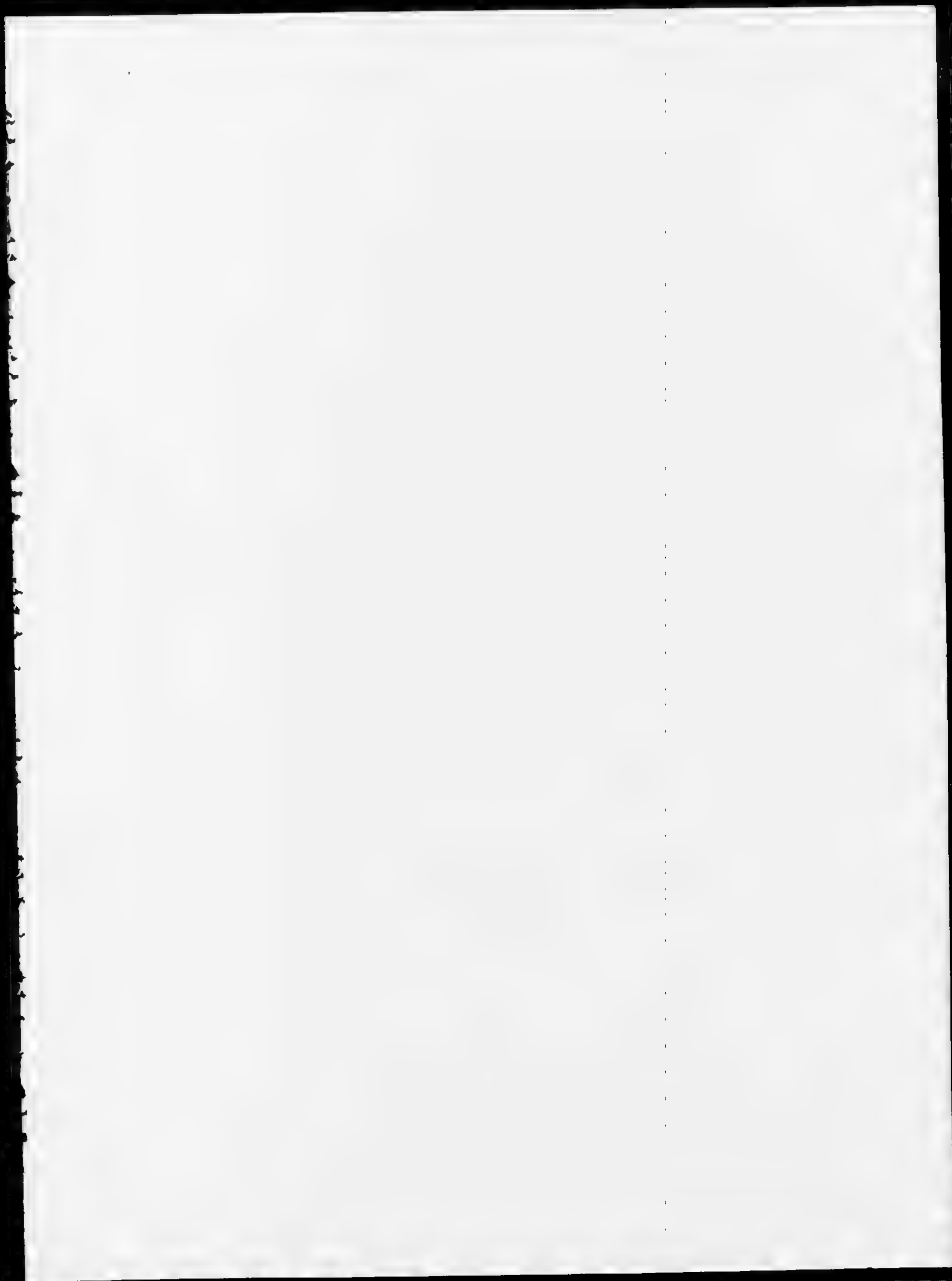
2. Jefferson School v. S.A.C.B., decided Dec. 17, 1963, U.S. App. D.C., No. 17,963, held that front organizations were precluded by the Board's finding against the Communist Party because of the privity arising from the Party's control of fronts. Respondent seems to recognize (Br. 47-48) that such privity is not present in infiltrated cases, in which Party control is not an element of the definition, but argues (Br. 46-48) that the preclusion satisfies due process because it is reasonable (Resp. Br. 46-48).

We do not see how it is reasonable to deny a party an opportunity to litigate a key issue just because somebody else, not in privity, litigated it. Cf. Kirby v. United States, 174 U.S. 47. The claimed reasonableness is even less apparent when the prior litigation involved a different issue, the nature of the Communist Party at a different time (Pet. Br. 90-91).

Respectfully submitted,

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Citation

17, 35

SUBVERSIVE ACTIVITIES CONTROL BOARD **United States Court of Appeals**
for the District of Columbia Circuit

Docket No. 116-56

FILED MAR 20 1963

ROBERT F. KENNEDY,
ATTORNEY GENERAL OF THE UNITED STATES,
PETITIONER

Nathan J. Paulson
CLERK

v.

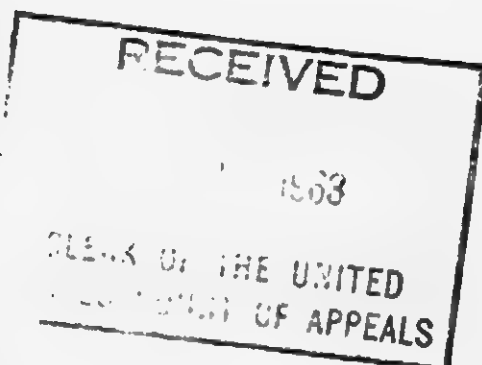
INTERNATIONAL UNION OF MINE, MILL AND SMELTER
WORKERS, RESPONDENT

Lafayette E. Broome and Francis X. Worthington,
for petitioner.

Nathan Witt and Joseph Forer, for respondent.

REPORT AND ORDER OF THE BOARD

Issued May 4, 1962



SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 116-56

ROBERT F. KENNEDY,
ATTORNEY GENERAL OF THE UNITED STATES,
PETITIONER

v.

INTERNATIONAL UNION OF MINE, MILL AND SMELTER
WORKERS, RESPONDENT

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REPORT AND ORDER OF THE BOARD

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SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 116-56

ROBERT F. KENNEDY, ATTORNEY GENERAL
OF THE UNITED STATES, PETITIONER

v.

INTERNATIONAL UNION OF MINE, MILL AND SMELTER
WORKERS, RESPONDENT

REPORT OF THE BOARD

This proceeding is before the Board for determination whether respondent is a Communist-infiltrated organization as defined in section 3 of the Subversive Activities Control Act of 1950, as amended by section 7 of the Communist Control Act of 1954.¹ After protracted hearings before Board Member Francis A. Cherry (hereinafter referred to as the "Hearing Member") both sides submitted proposed findings and conclusions, and Member Cherry, on December 26, 1961, issued and served a Recommended Decision in which he concluded that the Board should grant the petition of the Attorney General for an order of the Board determining that respondent is a Communist-infiltrated organization.

¹ Section 3(4A) of the Act defines a Communist-infiltrated organization as "any organization in the United States (other than a Communist-action organization or a Communist-front organization) which (A) is substantially directed, dominated or controlled by an individual or individuals who are, or who within three years have been actively engaged in, giving aid or support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title, and (B) is serving, or within three years has served, as a means for (i) the giving of aid or support to any such organization, government, or movement, or (ii) the impairment of the military strength of the United States or its industrial capacity to furnish logistical or other material support required by its Armed Forces: Provided, however, That any labor organization which is an affiliate in good standing of a national federation or other labor organization whose policies and activities have been directed to opposing Communist organizations, any Communist foreign government, or the world Communist movement, shall be presumed prima facie not to be a 'Communist-infiltrated organization'."

On February 1, 1962, respondent filed its exceptions to the Recommended Decision; on February 16, 1962, petitioner filed a memorandum with respect to respondent's exceptions; and on March 1, 1962, respondent notified the Board that it would not submit a reply to petitioner's memorandum. Both sides having waived oral argument, the proceeding was thereby submitted on the record. The Board has considered the Recommended Decision in the light of respondent's exceptions, petitioner's memorandum, and the transcript of the hearing and exhibits.

Respondent's exceptions cover 41 typewritten pages with 65 numbered paragraphs and many subparagraphs. Certain of the exceptions attack the motives and integrity of the Hearing Member, even to the extent of accusing him of accepting "perjured testimony" and of joining in the suppression of evidence. This appears in exception number 1 and runs through others. Exception 1 is as follows:

Respondent excepts to the Recommended Decision as a whole because the findings of fact are not based on the evidence, because the conclusions of law are in violation of the statute and the Constitution, and because the Recommended Decision, hereinafter referred to as R.D., does not report fully and fairly on the credibility of petitioner's witnesses and on petitioner's knowing use of their perjured testimony and his suppression of evidence and on other matters. The Board should therefore dismiss the petition, or, in the alternative, order a new hearing before a different examiner.

The Board has carefully reviewed the record and finds the challenges to the Hearing Member to be wholly and completely unwarranted. Some of the exceptions will be covered specifically below and will illustrate the lack of any justification for the unfounded accusations.²

² The attacks which have been made upon the Hearing Member after his having found against respondent in the Recommended Decision are in sharp contrast to the statement made by counsel for respondent at the close of the hearing. At that time, counsel stated, among other things: "I want to say on the record that I deeply appreciate the courtesy and patience you have shown in this proceeding. . . . I am anxious that the record show my strong feeling that you have conducted this hearing in the very best traditions, even though I have disagreed with you on many occasions, that is an inherent part of any law-suit and particularly a law-suit of this kind. You are a gentleman and a scholar and I appreciate it." (Tr. 9720-9721.)

In exception 2 respondent accuses the Hearing Member of "deliberate refusal" to make a ruling on the three year period referred to in the statute because doing so would have made it impossible, says respondent, to conclude that the evidence was sufficient to support the ultimate conclusion that respondent is a Communist-infiltrated organization. This is a misstatement of the record. The exception warrants discussion only because any possible doubt which it creates should be clarified.

The statutory definition of a Communist-infiltrated organization, quoted in footnote 1, supra, refers to individuals who "are, or within three years have been actively engaged in, giving aid or support to a Communist-action organization," In the exception respondent "excepts to the failure of the R.D. to conclude that the three-year period is the period immediately prior to the date on which the petition was filed, or the period from July 28, 1952, to July 28, 1955."³ (Exception 2, p. 2.) The fact is that the Hearing Member treated the three year period as encompassing, falling within, and consisting of those dates for the purposes of this proceeding. This is clear from the citation in the Recommended Decision to the written ruling issued by the Hearing Member on July 13, 1960, and by the statement in the Recommended Decision that the Hearing Member agrees with the position that the three year period is the three years prior to the date of the filing of the petition.⁴ (See finding 49 and footnote 2 at page 14 of the Recommended Decision.)

While the Board agrees with counsel for petitioner and the present position of counsel for respondent that for purposes of this proceeding the three year period is from July 28, 1952, to July 28, 1955, this does not mean that all evidence of events and occurrences before and after the period was automatically inadmissible. The evidence of this type that was received and considered by the Hearing Member was properly admissible and the

³ The three year period also appears in various of the considerations set forth in section 13A(e).

⁴ It is noted that counsel for respondent, not the Hearing Member, has vacillated as to the meaning of the three year period. Based upon the record as it existed at the time, the Hearing Member in his above mentioned memorandum ruling of July 13, 1960, noted that: "Both petitioner and respondent agree that the computation of time concerning the three year period dates back from the filing of the petition and petitioner concedes that evidence of infiltration must be introduced within the three year period." This seems to still be the position of respondent based upon the above quoted language from exception 2. However, at the very close of the hearing, when the Hearing Member was attempting to make abundantly clear the positions of the parties, counsel for respondent stated: ". . . our position is that it has to be three years from the date of the Board's order." (Tr. 9719.)

exceptions thereto are denied. As stated in the Recommended Decision, evidence as to events and occurrences outside the three year period was illuminating. This principle was recognized by the Supreme Court in Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1, wherein the Court said at page 69:

Where the current character of an organization and the nature of its connections with others is at issue, of course past conduct is pertinent. Institutions, like other organisms, are predominantly what their past has made them. History provides the illuminating context within which the implications of present conduct may be known.

There is ample evidence of record of events, occurrences and activities during the period from July 28, 1952, to July 28, 1955. Moreover, and as noted in the Recommended Decision, the continuity of significant facts and circumstances from dates prior to July 28, 1952, through dates extending well beyond July 28, 1955, renders questions as to the three year period relatively immaterial. By way of example, many of the same persons who constituted the important leadership of respondent during the three year period also held leadership positions for varying numbers of years both before, during, and after the three year period. Thus, as the record shows, respondent at the date of the filing of the Attorney General's petition was directed, dominated, and controlled by substantially the same individuals who had dominated and controlled the organization for many years and who continued to exercise direction and control of the organization throughout the years during which this hearing extended. The substantial number of these continuing leaders of respondent have been members of or sympathetic to the Communist Party and all of them have and continue to give aid and support to the Communist Party.

The various aspects of the three year period are raised in exceptions 2, 4, 11, 24, 27, 36, and 54. The Board finds these exceptions to be without merit and to neither justify nor require any changes in the findings and conclusions in the Recommended Decision.

A main thrust of respondent's exceptions is directed to the credibility of petitioner's witnesses, particularly four of them - Bellarmino Duran, Fred Gardner, Barbara Hartle, and Harold Kent. The exceptions also attack petitioner, claiming the knowing use of perjured testimony and the suppression of evidence. Exceptions in which credibility considerations are raised include numbers 3, 4, 5, 6, 7, 8, 9, 19, 30, 33, 34, 36, 37, and 47.

Each of the credibility considerations has been considered and evaluated.⁵ The Hearing Member having observed the witnesses during their direct testimony and on cross-examination concluded that none of the witnesses - respondent's as well as petitioner's - should be discredited and the Board agrees. The record does not support or justify respondent's charges that petitioner's witnesses testified perjurally, and this, of course, renders without merit the contentions that petitioner knew the witnesses were lying.

In exception 7(a) respondent renews its motion, filed August 3, 1960, to strike all of the testimony of the witness Hartle. This motion is based upon the contention that Hartle's "testimony is tainted because she testified falsely to the knowledge of petitioner in the American Committee case before this Board (Docket No. 109-53)." The renewed motion is denied for the reasons given in the Report of the Board on Reconsideration, issued March 8, 1962, in Robert F. Kennedy, Attorney General v. American Committee for Protection of Foreign Born.

With respect to the witness Duran, the contention (exception 5) that he should not be credited is based in part⁶ upon his testimony that one Elayne Goldstein was present at a particular meeting of the Communist Party while an earlier report that Duran made to the Federal Bureau of Investigation listing those present at that meeting did not include her name. No finding that Elayne Goldstein attended the meeting is made in the Recommended Decision. However, the possible contradiction by omission resulting from the absence of her name in an F.B.I. report does not warrant discrediting Duran's testimony on other subject matters.

⁵ Footnote 1 to finding number 31 on page 9 of the Recommended Decision lists the names of six witnesses who after leaving Mine-Mill became members of rival unions that had engaged in campaigns to win over Mine-Mill members to the rival unions. Exception 19 states that three other witnesses were connected with other unions after leaving Mine-Mill. These were Homer Wilson, Moriarity, and McLean. There is nothing in the record to show that the fact that these witnesses later joined other unions caused the witnesses to testify falsely and are not to be credited. Footnote 2 to finding number 31 lists witnesses who had previously testified about Mine-Mill in other instances. Exception 19(b) points out that in addition to those listed, the witness Kent testified before a grand jury in 1956. This has been taken into consideration.

⁶ Other points raised by respondent are: (1) that Duran testified that he made no reports to the F.B.I. after the indictment in the Denver Smith Act (Bary) case, whereas the record shows that he did in fact make reports after the indictment, and (2) that Duran's testimony and the records of the F.B.I. differ on how much Duran was paid for expenses as compared with services while serving as an informant. These matters have been considered in determining that Duran is not to be discredited.

Regarding the witness Gardner, respondent devotes over eight pages of the exceptions (exception 6, pages 7-15) to matters which it is contended show that all of Gardner's testimony should be stricken and no findings based thereon. To a considerable extent respondent relies upon rebuttal testimony of its witnesses Salvas and Mooney which in instances contradicted Gardner, or so it is contended. Review shows that in none of the instances of any significance was there necessary conflict. Consideration of the exceptions going to Gardner's credibility does not warrant any changes in the findings in the Recommended Decision based upon Gardner's testimony.

In exception number 8 respondent maintains that none of the testimony of the witness Kent should be credited and that the petition of the Attorney General should be dismissed because of alleged suppression by petitioner of evidence with respect to an item of Kent's testimony having to do with Irving Dichter, an official of respondent. The Recommended Decision finds that Dichter was a member of the Communist Party and active in the trade union work of the Party. The findings relating to Dichter, which appear at pages 17 and 18 of the Recommended Decision, are based upon the testimony of Rowena Paumi, Kent, and Gardner. Dichter was not called to deny or rebut the testimony given by these witnesses as to his Communist Party membership and activities.

Kent testified to Dichter's activities in early 1953 with the Trade Union Commission of the Communist Party and his activities in 1954 as a fellow member with Kent of a concealed or secret State Board of the Communist Party in Connecticut. This testimony was credited and findings are made thereon in the Recommended Decision. In addition, Kent testified to a conversation that he had with Dichter in the fall of 1955. No finding is made in the Recommended Decision as to this conversation. In his testimony Kent said that Dichter told him in this conversation that "he hadn't seen anyone since he signed the non-Communist affidavit" and that Dichter said "In fact, I haven't seen anyone before that time", which, according to Kent, meant before Dichter signed the affidavit. (See tr. 1718.) Counsel for petitioner produced for respondent's use in cross-examination the reports that Kent had made to the F.B.I. on subject matters about which he testified in this proceeding. In the memoranda of the F.B.I. agents reporting on their interviews with Kent (M.M. Exs. 48 & 49) it is stated that Kent related that Dichter had said that he had ceased all Communist Party activities since signing a non-Communist affidavit in conjunction with his union office, that Kent went on to say that Dichter immediately amended this and told him that in fact he, Dichter, had ceased all of his Communist Party activities prior to the time that he had signed the non-Communist affidavit. While these two versions may have meant the same thing to Kent, it is possible that he did not fully remember the conversation at the time of

his testimony, and the Hearing Member properly did not base any finding on the conversation. This does not mean, however, that because of a possible inconsistency in the two versions Kent's testimony on unrelated matters should be stricken. Nothing was developed to even remotely indicate that Kent knowingly testified falsely in this proceeding about the conversation. Moreover, the fact that his F.B.I. report was turned over to respondent negates the contention that petitioner suppressed evidence.

In exception 9 respondent excepts to the admission of any of the testimony of petitioner's witness Morales and of his reports to the F.B.I., which were admitted as past recollection recorded. This is based primarily upon respondent's statement, not supported by the record, that Morales' "memory was conveniently lost." (Exception 9, p. 18.) There was no error in the admission of Morales' reports. The record shows that the Hearing Member enforced strict requirements in the admission of the Morales' reports as past recollection recorded.⁷ It is noted in this connection that every statement of Morales and every report of the F.B.I. even though not a statement of the witness under 18 U.S.C. 3500, touching the testimony given by Morales, was delivered to respondent for purposes of cross-examination but respondent waived further cross-examination and returned the documents.

The Recommended Decision sets forth in considerable detail, pages 4-9, the procedures followed and the situations and circumstances that developed with respect to the production to respondent for purposes of cross-examination of prior statements made by petitioner's witnesses to the F.B.I. Respondent's exception 13 objects to the acceptance by the Hearing Member in some instances of affidavits of F.B.I. agents, who prepared memoranda of interviews with certain witnesses, as extrinsic evidence to aid in determining whether the agents' memoranda qualified as statements of the witnesses so as to be producible to respondent. The procedure followed under the circumstances is affirmed.

Exception 14 challenges the denial of respondent's motion to dismiss the proceeding, and alternative motions, when petitioner elected not to produce the prior statements of six witnesses and moved to strike their testimony, which motion to strike was granted by the Hearing Member. There

⁷ When the matter arose during the hearing, respondent's objection was sustained to the first report offered for the reason that the recollection of Morales had not been exhausted on events recorded in the document. The Hearing Member ruled that such documents would be admitted only where a foundation was laid by showing that the witness had no recollection of the facts the document was offered to prove, either independently or after his recollection was refreshed by the document. (Written ruling of the Hearing Member, July 2, 1957.)

was no error in this regard. The Board accepts the Hearing Member's statement that he has in no way or manner been influenced from having heard the witnesses. In any event, the testimony was stricken and has not been part of the record reviewed by the Board.

In exception 15, respondent requests "appropriate review by the Board of all the documents sealed by the Hearing-Member (Nos. 24, 25, 29) pursuant to the procedure under 18 U.S.C. 3500." This has been done. The Board agrees with and affirms the excisions made by the Hearing Member and finds no errors in any other respects.

Respondent, in exception 23, excepts to a "finding" in footnote 1 at page 13 of the Recommended Decision that the individuals involved had knowledge of the nature and purpose of the Communist Party. The requirement of this knowledge appears in the evidentiary consideration contained in section 13A(e)(1) which, as applied to this proceeding, means that the Board shall consider the extent, if any, that the effective management of respondent is conducted by individuals who are, or within three years have been, members, agents, or representatives of the Communist Party, or engaged in giving aid and support thereto, with knowledge of the nature and purpose thereof.⁸

The footnote 1 at page 13 of the Recommended Decision merely notes that "the undenied facts as to their statements, declarations, and conduct, as are set forth passim, require the conclusion that their Communist orientation could not have existed with innocence of the nature and purposes thereof. The Hearing Member later summarized the facts leading to the subsidiary conclusion that the individuals comprising the effective management of respondent had knowledge of the nature and purpose of the Communist Party, namely, activity in both Mine-Mill and in the Party, attending Communist Party conclaves, meeting with high functionaries of the Communist Party, and taking positions and carrying out activities consistent with Communist Party policy. These undenied and un rebutted facts properly lead to the conclusion for purposes of this proceeding that the individuals had knowledge of the nature and purposes of the Communist Party.

All rulings made by the Hearing Member and to which respondent has taken exception have been reviewed and are affirmed. The Board has read and considered all portions of testimony referred to in the exceptions and not

⁸ This and the other considerations set forth in section 13A(e) are mere aids, not exclusive, in arriving at the ultimate finding, and no one item need be conclusive. (Cf. Communist Party v. Subversive Activities Control Board, 223 F.2d 531, 559-560.)

specifically mentioned in the Recommended Decision. The Board has also reviewed and agrees with the findings or conclusions made from the evidence, including those which respondent contends were contrary to the evidence or not supported by sufficient evidence. A number of the findings are objected to as irrelevant. The Board does not agree that these findings are irrelevant to the various issues involved. All exceptions that are not specifically or by implication dealt with herein have been considered and are rejected.

Review of the record, the exceptions, and petitioner's memorandum results in the following changes or modifications in the Recommended Decision:

(a) The first sentence in finding No. 57, page 23, gives the year 1946 in which Homer Wilson had certain dealings with Maurice Travis. The year should be 1947 instead of 1946 and is hereby changed.

(b) Finding No. 78, page 38, refers in the first sentence to a Communist Party meeting attended by Duran at the home of one Mike Ross. In his testimony Duran gave the name of Beverly Mike Ross and since it is not clear on the record whether this is the same Mike Ross who was a functionary of respondent, the sentence is hereby deleted from finding No. 78.

(c) In finding No. 93(b), pages 43-44, reference is made to Hain being present at a discussion involving functionaries of respondent and a member of the Communist Party. It was Warren Henderson, not Hain, who was present at the meeting and testified about it. The finding is hereby modified to that extent.

(d) Finding No. 102(o), page 53, concerns the 1946 convention and includes among those elected to office the name of Jesse Van Camp as Board Member for District 4. The record is conflicting on whether Van Camp or one Leonard Douglas was elected to this position. Accepting the "Official Proceedings of the Forty-Second Convention" (M. M. Ex. 5) as controlling, the finding is changed to show Douglas instead of Van Camp as the nominated and thereafter elected Board Member for District 4 at that time (A. G. Ex. 108). This in turn requires modification of the finding with respect to the Robinson factions. While the number in the anti-Robinson faction is unaffected and remains at three, the number in the pro-Robinson faction is changed from nine to eight since there is not sufficient evidence about Douglas to determine in which faction he belonged.

Based upon review and consideration of the entire record, the Board hereby adopts and makes as its own the findings and conclusions in the

Recommended Decision as modified and changed herein. On the basis of the findings and conclusions, the Board determines that the preponderance of the evidence establishes that the International Union of Mine, Mill and Smelter Workers is a Communist-infiltrated organization within the meaning of the Subversive Activities Control Act of 1950, as amended. An appropriate order accompanies this Report.

By the Board (Chairman Lee not participating in this Report).



Francis A. Cherry, Member

Thomas J. Donegan, Member

James R. Duncan, Member

Paul G. Conway, Member

May 4, 1962

Washington, D. C.

SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 116-56

ROBERT F. KENNEDY, ATTORNEY GENERAL
OF THE UNITED STATES, PETITIONER

v.

INTERNATIONAL UNION OF MINE, MILL AND SMELTER
WORKERS, RESPONDENT

PRELIMINARY STATEMENT

A. The Proceeding

1. This is a proceeding on petition of the Attorney General of the United States for an order of the Board determining that the International Union of Mine, Mill and Smelter Workers (sometimes referred to herein as "Mine-Mill" or "the Union") is a "Communist-infiltrated organization" within section 3 of the Subversive Activities Control Act of 1950, as amended by the Communist Control Act of 1954.

2. The petition, filed July 28, 1955, a copy of which was duly served upon respondent, alleged that the effective management of respondent is dominated and controlled by persons who are members of Communist organizations, and that respondent has been used as a means of giving aid and support to Communist organizations, foreign Communist governments, and the world Communist movement. A number of facts and circumstances evidencing this were alleged, including those involving relationship of the Union with the Communist Party of the United States, which the petition alleged to be a "Communist-action organization."

3. After a requested extension of time was granted in part by the Board, respondent, on September 16, 1955, filed a number of motions addressed to the petition. Oral argument was heard by the Board and the motions were denied, with one qualification, in a memorandum opinion issued by the Board on December 9, 1955. Respondent filed its answer to the petition on January 23, 1956, denying that it was a Communist-infiltrated organization and setting forth various affirmative defenses including asserted unconstitutionality of the proceeding.

4. The start of the hearings was delayed because of an annual convention of respondent which required the presence of its officials and attorney, and was then further delayed while the Board reconsidered, pursuant to remand by the Supreme Court, an earlier proceeding involving the Communist Party of the United States.¹ Hearings for the purpose of taking evidence commenced on February 25, 1957. A subsequent remand of the Communist Party case, that time by the United States Court of Appeals for the District of Columbia Circuit, requiring additional proceedings and another reconsideration by the Board, resulted in suspension of hearings from January 9, 1958, until February 13, 1959. Hearings were also suspended for substantial periods by reason of a Federal criminal trial of certain officers of respondent and by reason of matters in connection with the production to respondent of reports made by petitioner's witnesses to the Federal Bureau of Investigation.

5. Petitioner's case in chief consisted of the oral testimony of 19 witnesses and 82 exhibits.² Four of petitioner's nineteen witnesses had been members of both Mine-Mill and of the Communist Party of the United States, ten others had been members of Mine-Mill but not of the Party, and the remaining five of the nineteen had been members of the Party but not of Mine-Mill. Of the total of fourteen Mine-Mill members, seven had been members as late as 1951 or longer, two of the seven up to the time of testifying, one until 1955, and one until 1954.

6. Four of petitioner's witnesses who had been members of the Party but not of Mine-Mill and one who had been a member of both, were serving as informants for the F.B.I. The reports of the F.B.I. of relevant information previously furnished by these four informant-witnesses were made available to respondent for impeachment purposes, as were the reports of information furnished by three other witnesses. Reports of certain other witnesses were not produced. A separate subsection, below, is devoted to the issues that arose in connection with respondent's requests for the production of F.B.I. reports.

¹ The Supreme Court on April 30, 1956, remanded the Communist Party case to the Board for further proceedings (351 U.S. 115). Respondent on May 3, 1956, moved to dismiss the instant proceeding asserting lack of legal foundation in view of the remand of the Party case. The motion was denied by order of the Board issued July 31, 1956.

² The 19 witnesses do not include six whose testimony, and exhibits, were subsequently stricken. A total of 124 exhibits were identified by petitioner. Of the 82 that became part of the evidentiary record, some involve many separate documents.

7. Respondent presented the oral testimony of 125 witnesses and identified some 204 exhibits of which 167 remain part of the record. Most of respondent's witnesses had been members and officers of local unions affiliated with the International organization. Nine had been International officers or staff members. The testimony of the "rank and file" members was received over petitioner's objections that it was immaterial and irrelevant to the issues. The weight to be given this testimony and the significance of it, if any, are, however, other matters to be resolved at the appropriate places in the findings of fact, infra.

8. When petitioner rested his case in chief on June 29, 1960, ^(TR 5393) respondent moved to dismiss the petition on a number of grounds, the principal one being that petitioner had not made a prima facie case. Oral argument on the various grounds was heard on August 11, 1960. ^(TR 543-550)

9. The grounds preliminary to the contention that petitioner had not made a prima facie case were: (1) that petitioner's witnesses gave false testimony to the knowledge of petitioner; (2) that petitioner suppressed evidence favorable to respondent; (3) that the record was tainted by the testimony of perjurious witnesses Duran, Gardner, Hartle, and Kent (respondent moved in the alternative on this ground to strike the testimony of these witnesses); (4) that respondent was denied a fair hearing by the granting of petitioner's motions to strike the testimony of six witnesses whose F.B.I. reports petitioner declined to produce¹ (respondent moved in the alternative on this ground for a declaration of a mistrial); and (5) that local unions of respondent were indispensable parties but had not been joined. The first four of these five preliminary grounds were considered and denied, for the reasons therein set forth, in a written ruling issued by the Hearing-Member on July 13, 1960. This ruling also denied an additional motion of respondent to strike all testimony and other evidence presented by petitioner which was not within the three year period enacted as part of section 3(4A) and 13(A)(e)(1) through (5) and (7) of the Act, as amended.

10. The contention that the petition should be dismissed for failure to join the local unions as parties was not argued by counsel for respondent who stated that he assumed it was governed by Board precedent in Attorney General v. United Electrical, Radio and Machine Workers of America. This ground was denied at the hearing. ^(TR 5506)

11. The motion to dismiss for failure of petitioner to make a prima facie case was denied in a written ruling issued September 1, 1960, as were

¹ See infra.

two subsequent motions, namely, a renewed motion to strike the testimony of petitioner's witness Duran, and a motion to strike the testimony of petitioner's witness Hartle.

12. The presentation of respondent's case in chief was concluded on March 10, 1961. (TR 963) Petitioner then put in evidence certain exhibits as rebuttal and the hearing was recessed at the request of counsel for both sides to permit their consideration of further rebuttal and surrebuttal evidence. As the result of subsequent correspondence, petitioner withdrew the rebuttal exhibits that had been introduced on March 10, 1961, and, by a telegram dated April 7, 1961, respondent advised that no surrebuttal would be offered.

13. Proposed findings of fact and conclusions were filed by both sides on May 19, 1961. At a hearing held on May 23, 1961, both sides waived summation argument and the proceeding was submitted on the record and the proposed findings and conclusions. (TR 970-971) Thereafter, a stipulation entered into between counsel for both sides on June 21, 1961, was filed and made a part of the record. See transcript pages 9722-9725, dated June 28, 1961.

B. Production of Prior Statements

14. A number of petitioner's witnesses who appeared during the period from February to June 1957, were excused after direct and cross-examination but subject to recall for further cross-examination if production to respondent was ordered of the witnesses' prior reports to the Federal Bureau of Investigation. At the time, the case of Jencks v. United States, involving a related question on production of documents, was pending in the Supreme Court. Jencks was decided on June 3, 1957, with the Court holding that the defense in a Federal criminal prosecution was entitled, under certain circumstances, to obtain, for impeachment purposes, statements which had been made to government agents by government witnesses (353 U.S. 657).

15. On June 25, 1957, respondent filed a motion that petitioner be ordered to produce, for inspection by respondent with a view to use on further cross-examination, all written statements made to the F.B.I. by the witness George Knott, and all documents based on the witness' oral statements to the F.B.I. in possession of petitioner, touching the subject matter about which the witness testified. Basically similar motions were filed on July 9, 1957, with regard to the witnesses Ralph Rasmussen and Kenneth Eckert. At the hearing on July 12, 1957, respondent moved that further hearings be suspended until ruling could be made on these motions and on additional, similar ones that were to be filed. (TR 4141, 4256) On July 23, 1957, respondent filed such

motions with regard to the witnesses Harold Kent, Warren Horie, Leo Ortiz, Charles Dirdak, Ralph Locke, Jr., James Petersen, Edward Bush, Ernest Everingham, George Kirby, Elwood Hain, Bellarmine Duran, Arthur Moralez, and Rowena Paumi.

16. Oral argument on the motions for production of documents was held on July 30, 1957, and on agreement of the parties, ^(7K 4253-54) the hearing was recessed until further notice in view of the then pending decision by the Court of Appeals for the District of Columbia in *Communist Party of the United States v. Subversive Activities Control Board*, in which the Court, on January 9, 1958, decided that the principles of the Supreme Court decision in *Jencks* (*supra*) are applicable to proceedings before this Board. (254 F.2d 314). In an unreported order of April 11, 1958, in the same case, construed by an order of June 16, 1958, the Court held in effect that the types of documents subject to production in Board proceedings are as defined in section 3500 of the Criminal Code, 18 U.S.C., enacted September 2, 1957.

17. After an extended continuation of the recess necessitated by the fact that the January 9, 1958, decision of the Court of Appeals remanded the Communist Party case to the Board for further proceedings,¹ the hearing resumed with a conference on February 13, 1959, ^(7K 4256-57) and additional argument on the motions to produce on February 19, 1959. ^(7K 4264-4365) At the argument it appeared that counsel had misconceptions as to prior Board rulings on the nature and type of documents that are subject to production for use in cross-examination. As a result, the Hearing-Member by memorandum dated March 9, 1959, certified five questions for Board ruling.

18. The Board's memorandum ruling was issued March 23, 1959, stating that only "primary" documents as defined in this record at transcript pages 4279-4281 are subject to production; that the ultimate determination is to be made by the trier as to whether a document is a "statement" within the terms of 18 U.S.C. 3500 (e); that resolution of whether respondent's motions as amended orally (see tr. 4334-4336) were sufficiently specific was left to the discretion of the Hearing-Member in the circumstances of this record; that any order of production should be limited to documents in possession of the Department of Justice and not permit a governmentwide search for documents where no foundation had been laid as to their existence; and, that in the absence of some extraordinary showing there should be accepted an unequivocal representation from counsel for petitioner that there is not in the possession of petitioner a specifically described document.

¹ See *supra*.

19. There followed various conferences, memoranda, and rulings that resulted, substantially by agreement, in the procedure whereby any documents containing relevant information (or information of doubtful relevancy) furnished by the witnesses to government agents but which petitioner did not consider to be "statements" as defined in 18 U.S.C. 3500 (e), or which also contained irrelevant material, would be submitted to the Hearing-Member, with accompanying memoranda setting forth petitioner's views, for in camera determination and excision of irrelevant portions; this to be done before any conceded "statements" were turned over directly to respondent. (See, tr. 4375; 4378-79; Memorandum of the Hearing-Member dated May 27, 1959; Petitioner's "Memorandum Re Production of Documents," filed June 11, 1959; Respondent's "Memorandum Re Production of Documents," filed June 19, 1959; Petitioner's Request for Return of Documents, filed June 26, 1959; Respondent's Opposition, filed July 2, 1959; and Ruling of Hearing-Member, issued July 9, 1959.) It was understood and agreed that there were to be included in the production procedure any relevant documents reflecting information furnished by the witnesses to government attorneys (as well as to F. B. I. agents).

20. As part of the procedure adopted, it was agreed that petitioner would furnish to respondent schedules of payments made by the F. B. I. to certain witnesses. ^(TR 4376) Upon stipulation of counsel, ^(TR 4635) an order, dated April 20, 1960, was signed restricting respondent's use of all documents produced pursuant to 18 U.S.C. 3500. A motion by respondent that petitioner produce copies of any testimony given before any Federal Grand Jury by any of petitioner's witnesses in this proceeding ^(TR 4356) was denied. ^(TR 4514)

21. Respondent's first motions for production of documents ran to 16 witnesses (supra). Of these, petitioner, on the dates set forth in parentheses, submitted for in camera examination documents, with accompanying memoranda, on 14 witnesses as follows: Hain (July 14, 1959), Everingham (July 14, 1959), Dirdak (July 14, 1959), Kent (July 17, 1959, August 14, 1959, and April 26, 1960), Kirby (July 17, 1959), Bush (July 17, 1959), Locke (August 4, 1959), Petersen (August 4, 1959), Eckert (August 7, 1959, and August 14, 1959), Paumi (August 7, 1959, and August 14, 1959), Horie (August 7, 1959), Rasmussen (August 14, 1959), Moralez (August 14, 1959), and Duran (April 18, 1960). ^(TR 4676-4685, 4608)

22. In most instances, petitioner took the position in his memoranda accompanying the documents submitted for in camera examination that the documents were not statements as defined in 18 U.S.C. 3500 (e) and thus not producible. The Hearing-Member, in a notice setting a date for a hearing in connection with the production of the documents, stated the need for additional information concerning the basis for petitioner's position (Memorandum of July 17, 1959).

23. The subsequent developments resulted in four different approaches that were taken by petitioner to the production of the documents. These and the ensuing motions or positions taken by respondent, will now be treated separately.

24. With respect to six of the witnesses petitioner submitted affidavits of the government agents who had interviewed them, concerning the manner in which the interviews were conducted and the agents' reports written. These were in support of the contention that the documents submitted for in camera examination were not "statements" so as to be producible, and petitioner had no other documents that were statements of the witnesses on the subject matter of their testimony. A copy of the affidavits was given counsel for respondent who was heard thereon. Over respondent's objections the affidavits were considered and on the basis of examination of the documents and the affidavits it was determined and ruled that the documents did not constitute the type that respondent was entitled to use in cross-examination.¹ Respondent's motions to call the agents who had interviewed the witnesses and executed the affidavits were denied (e.g., tr. 4513-4589). The documents and affidavits were made a part of the record, sealed, as Board exhibits. The witnesses and pertinent record references are as follows: Everingham, Dirdak, Kirby, Hain, Bush, and Rasmussen; tr. 4429-4444, 4516-4524, 4590-4591; Board Exhibits 1, 2, 3, 4, 5 and 6.

25. As to four of the witnesses petitioner waived the standards of section 3500 where possibly applicable and agreed that after the excision of irrelevant material the government memoranda of interviews and written statements of the witnesses be turned over to counsel for respondent for purposes of cross-examination. These were the witnesses Kent, Morales, Duran and Paumi. (TK 43-45-45-46, 436 45-46, 4584-46-5) Paumi, Kent and Duran were subsequently recalled and cross-examined in the light of the documents. Respondent did not desire the recall of Morales for additional cross-examination and the Morales documents were returned to petitioner. (TK 47-45-5) The Paumi, Kent and Duran documents, including the portions made available to respondent and the portions not made available because of being irrelevant have been made a part of the record, sealed, as Board Exhibits 7, 8 and 9, respectively. In some instances specific portions of the documents were offered and received in evidence as respondent's exhibits. Credibility issues raised

1 Respondent, on February 2, 1961, filed a motion, based upon the decision issued January 23, 1961, by the Supreme Court of the United States in Campbell v. United States (365 U.S. 85) seeking reconsideration of the receipt of the affidavits and seeking that the agents be called. The motion also attacked the fact that no documents had been submitted by petitioner which reflected information furnished by the witnesses to government attorneys. The motion was denied in a memorandum ruling issued February 15, 1961.

as a result of the additional cross-examination on the documents have been considered and discussion where warranted appears at the appropriate places herein.

26. A third approach taken by petitioner with regard to the motions for production of documents ultimately involved six witnesses - Locke, Petersen, Eckert, Horie, Knott and Ortiz. As to these witnesses petitioner exercised the election referred to in 18 U.S.C. 3500, declined to produce the witnesses' reports, and moved that the testimony of the witnesses and the exhibits put in through them be stricken.^(TR 454-458, 456, 466, 463, 514) Respondent opposed this and made a series of alternate motions.^(TR 457-462) Petitioner's motions to strike the testimony and exhibits were granted, respondent's motion for dismissal of the proceeding upon declaration of a mistrial was denied; an alternative motion was also denied to require the production of the witnesses' reports for in camera inspection and declaration of a mistrial if contradictions or inconsistencies appeared; and, a further alternative was denied to require the production of the reports for the purpose of sealing and attaching to the record for court review.

27. Before moving to strike the testimony of Eckert, petitioner stated that the only reports of the witness in petitioner's possession related to but one of the many areas or matters to which the witness testified, and petitioner first moved that the testimony in that area be stricken and the rest of his testimony remain in the record.^(TR 463-465) This was argued extensively, and a written memorandum was filed by petitioner on May 20, 1960, to which respondent replied orally.^(TR 463-465) The motion to strike only the parts of the testimony to which the reports were relevant was denied.^(TR 519, 527-528)

28. The Hearing-Member in reviewing the record and making his findings of fact and conclusions has completely disregarded the testimony and exhibits of the six witnesses whose testimony was stricken and has in no way or manner been influenced from having heard the witnesses testify.

29. The final approach taken by petitioner in the matter of the production of documents concerned the last three of his witnesses, who testified for the first time after much of the foregoing had taken place. As to these - Gardner, Fikes and Hartle - petitioner produced before cross-examination written statements and the F. B. I. reports of interviews with the witnesses and, after the excision of irrelevant material, the documents were made available to respondent for use in cross-examination. The

1 The stated reasons for not producing the Eckert statements were that the witness justifiably in the view of counsel for petitioner refused to make any additional appearances, and if compelled to appear would refuse to testify. A copy of the statement involved was attached to the memorandum and is, therefore, part of the official file.

excised and unexcised portions of these documents were made a part of the record, sealed, as Board Exhibits 10, 11, and 12, respectively. (TR 44- 4362, 4937, 4938, 4992, 4996, 5010-5012) 53-53 -

30. Summarized, there were 19 witnesses for petitioner where the question arose as to the production of prior statements made by them to government agents on subject matters of their testimony. As to seven of the witnesses - Duran, Fikes, Gardner, Hartle, Kent, Paumi and Morales - the relevant prior reports were made available to respondent for impeachment purposes. With respect to six of the witnesses - Bush, Dirdak, Everingham, Hain, Kirby, and Rasmussen - the reports were determined not to meet the requirements of 18 U.S.C. 3500 and were not made available to respondent. The testimony and exhibits of the remaining six witnesses involved - Eckert, Horie, Knott, Locke, Ortiz and Petersen - were stricken upon petitioner's election that the reports not be made available to respondent.

C. Credibility Considerations

31. Issues were raised by respondent going to the overall or general credibility of many of petitioner's witnesses. With respect to some of the witnesses it was shown that after their connections with Mine-Mill had ended they became members of rival unions that had engaged in campaigns to win over the Mine-Mill employees in particular areas to the rival unions.¹ Some of petitioner's witnesses had testified about Mine-Mill or persons in Mine-Mill before congressional committees, grand juries, and in criminal prosecutions before they appeared in this proceeding.²

32. As indicated supra, some of petitioner's witnesses had been paid informants for the Federal Bureau of Investigation.³ In certain instances they were cross-examined on alleged inconsistencies between reports of information they had given to the F.B.I. or in other proceedings and their testimony in this proceeding on the same subject matters.⁴

33. Gardner and Hartle were cross-examined, subject to reasonable restrictions imposed by the Hearing-Member, on marital and other personal matters. Two witnesses were called by respondent who gave testimony different from that of Gardner on certain subjects about which Gardner had

¹ These included: Everingham, Gardner, Hain, Henderson, Kirby, and Rasmussen.

² These included: Duran, Gardner, Hartle, Paumi, and Rasmussen.

³ Paumi, Kent, Duran, Morales, and Fikes.

⁴ Particularly Paumi, Kent, Duran, and Hartle.

testified. The conflicts in this testimony are resolved infra. The overall credibility of Hartle was considered and ruled upon in a memorandum of the Hearing-Member issued September 1, 1960, denying respondent's motion to strike her testimony. (The memorandum also denied respondent's motion to strike the testimony of Duran.)

34. Respondent's rank and file witnesses seemed to testify to the limited matters on which they were called with sincerity as they viewed the matters or understood them to be. Some of these witnesses, as well as the witnesses Stern and Salvas showed an obvious interest in the proceeding, and Salvas on cross-examination often said he was unable to remember the facts called for by the questions.

35. The witnesses for both sides were observed with care as to their demeanor and outward appearances. All of the various credibility considerations have been considered. It is found that the record does not warrant adverse overall credibility findings as to any of the witnesses.

FINDINGS OF FACT

A. Organization and Structure of the Union

36. The International Union of Mine, Mill and Smelter Workers, respondent, is a labor organization in the United States, with headquarters at Denver, Colorado. ^(ANSWER, p. 2, AG, 2, 11, 12, 44, 45) The Union was founded at Butte, Montana, on May 15, 1893, under the name Western Federation of Miners and continued under that name until December of 1916, at which time its name was changed to its present one. From the date of its origin until 1938 it was affiliated with the American Federation of Labor, and from 1938 until February 1950, it was affiliated with the Congress of Industrial Organizations as a participating member. In February of 1950, the Union was expelled from the CIO and since its expulsion the Union has not been an affiliate of any national federation or other labor organization whose policies and activities have been directed to opposing Communist organizations, Communist foreign governments and the world Communist movement. ^(ANSWER, p. 2)

37. The jurisdiction of Mine-Mill under its constitution extends to all mining operations except coal, plus the processing of ore, chemical and reduction plants, casting and allied industries. ^(STERN, 12, 176) In practice, however, the Union's chief concentrations are in nonferrous metals, particularly copper, lead and zinc, and its effective jurisdiction is over mining, milling, smelting and refining these ores.

¹ Theoretically, Mine-Mill has jurisdiction over bauxite and uranium but no properties in these metals have as yet been organized in the United States. ^(TR 6584 STERN)

38. The International Union is a central body and grants charters to local unions which consist of subordinate bodies or groups of persons working in one or more mines, mills, smelters or related enterprises.^(M. E. 133-134) Only the International Union, not the locals, is the respondent in this proceeding.^(M. E. 133-134) For purposes of administration and organization, the Union has set up seven geographical districts within the United States as follows: (States in the respective areas which are not listed are theoretically covered but did not have Union membership at the time of the hearing.)^(STERN, TR 604-06)

- District 1 - Montana, Wyoming, and Colorado;
- District 2 - Utah, Nevada, Arizona, New Mexico, and Texas;
- District 3 - Illinois, Ohio and Indiana;
- District 4 - Missouri, Kansas, Oklahoma, and Arkansas;
- District 5 - Alabama, Georgia, North Carolina, Mississippi, South Carolina, and Tennessee;
- District 6 - New Jersey, Connecticut, West Virginia, New York, and Pennsylvania;
- District 7 - Washington, Oregon, Idaho, and California.

Prior to 1955, there was an eighth district located in Canada but since then the Canadian locals have been autonomous.^(STERN, TR 604-06) For some five years prior to 1948 there had also been a separate division called the Die Casting Division composed of locals in the die casting industry but the division was dissolved and the locals put into the geographical district in which they worked.^(STERN, TR 604-06) At around the time of the hearing, District 2 had the largest membership, and District 6 the next largest. At one time District 1 had one of the largest memberships.^(STERN, TR 604-06)

39. Once each year the local unions elect delegates who, together with the officers of the International Union, meet in annual convention.^(M. E. 133-134) Between conventions the affairs of the Union are directed by the International Executive Board composed of the president, two vice presidents,¹ a secretary-treasurer, and a board member for each of the seven geographical districts.² The officers and board members are nominated at the appropriate conventions and thereafter elected by referendum vote of the entire membership for terms of two years.^(STERN, TR 604-06) Vacancies occurring between elections are filled by appointment by the International Executive Board.^(STERN, TR 604-06)

¹ Up to and including the year 1946 there was only one vice president. Commencing in 1947 there were two vice presidents, designated respectively as Eastern and Western Vice Presidents.^(STERN, TR 604-06)

² Because of insufficient members to warrant it, there has not been a board member from District 4 since the mid-1950's.^(STERN, TR 604-06)

40. In addition to the International officers, the Union has various staff members and other employees.^(MMF x 136) The staff includes regional directors, International representatives, research director, educational director (between 1947 and 1952), and editor of the official organ.^(AG. Ex. 144-115; STERN, TR 1406-68) The staff members are appointed by the International President subject to the approval of the International Executive Board.^(STERN, 1906-07) Chairmen of the convention committees are named by the International President and the members of the committees are appointed by the International Board, usually from a list of proposed committeemen submitted by each board member.^(STERN, TR 6770)

41. The International representatives, as the name implies, represent the International Union in contacts and dealings with the local unions; they carry out organizing activities and serve the locals by such as helping with contract negotiations and grievances.^(HENDERSON, TR 2525; MMF x 133)

42. The International Union publishes and disseminates as its official organ a periodical known as the "Mine-Mill Union."^(ANSWER, p 3)

43. The Union has been and is a representative of employees within the meaning and for the purposes of section 7 of the National Labor Relations Act, as amended, and serves as the exclusive collective bargaining representative of employees under section 9 of that Act.^(ANSWER, p 3)

B. Communists in the Leadership of Respondent

44. (a) The statutory definition of a Communist-infiltrated organization requires the consideration, among others, of whether the organization:

. . . is substantially directed, dominated, or controlled by an individual or individuals who are, or who within three years have been actively engaged in, giving aid or support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title, . . .

(b) Section 13 (A)(e)(1) prescribes that in determining whether any organization is a Communist-infiltrated organization, the Board shall consider:

. . . to what extent, if any, the effective management of the affairs of such organization is conducted

by one or more individuals who are, or within three years have been, (A) members, agents, or representatives of any Communist organization, and Communist foreign government, or the world Communist movement referred to in section 2 of this title, with knowledge of the nature and purpose thereof, or (B) engaged in giving aid or support to any such organization, government, or movement with knowledge of the nature and purpose thereof;

(c) As applied to this proceeding by the Attorney General's petition and the evidence presented by counsel for the Attorney General the issue framed by the aforequoted statutory provisions becomes whether respondent "is substantially directed, dominated, or controlled by an individual or individuals who are, or who within three years have been actively engaged in, giving aid or support to" the Communist Party of the United States (hereinafter sometimes referred to for convenience as "the Communist Party" or merely "the Party").¹

45. The entire record established, and as appears from the facts set forth herein, respondent has been and is substantially directed, dominated, or controlled by the individuals who constitute the International Executive Board, assisted by the staff members.²

46. Petitioner presented evidence to show that a number of respondent's officers, board members and staff personnel were members of the Communist Party of the United States, and that certain others were connected or affiliated with the Party. None of the individuals so identified appeared to deny the evidence about them. No showing was made that they were unavailable and no explanations were given of their not testifying. Except for the testimony considered below, the evidence was not otherwise contradicted or rebutted.

¹ The Communist Party of the United States is a "Communist-action organization" as that term is used in the definition quoted in subparagraph (a), above (see infra). With respect to the provision in the evidentiary consideration of section 13(A)(e)(1), as applied to this proceeding, that the individuals involved have acted "with knowledge of the nature and purpose" of the Communist Party, the undenied facts as to their statements, declarations, and conduct, as are set forth passim, require the conclusion that their Communist orientations could not have existed with innocence of the nature and purposes thereof.

² Counsel for respondent acknowledged that at least between conventions the direction and management has been vested in and exercised by the International Executive Board (see, e. g., tr. 5449-5450). Those individuals - the executive board, assisted by the staff members - also constitute the "effective management" for purposes of the evidentiary consideration of section 13(A)(e)(1).

47. As is considered more fully in subsequent sections hereof, respondent advanced the contention to the effect that charges of Communism have been made against the Union and its leadership in a sinister fashion by employers, rival unions, and disgruntled members of respondent in efforts to disrupt and wreck the Union.¹ Moreover, in every case, except that of Maurice Travis, where the witnesses for respondent knew one or more of the persons described by any of the petitioner's witnesses as members of the Communist Party, the witness for respondent testified that no such person ever told him, the witness, that he was a member of the Communist Party or ever asked the witness to join the Communist Party. Where there was otherwise undenied and uncontradicted evidence showing an individual to be connected or affiliated with the Communist Party, it is not overcome by this type of attempted rebuttal.

48. As will appear, most of the individuals who were members of the International Executive Board at the time of the filing of the Attorney General's petition (July 28, 1955) had held leadership positions in the Union for a number of years prior thereto and continued to hold leadership positions for those years thereafter which were covered by the evidence - generally up to 1959-1960. In addition, evidence was presented on the declarations and conduct of former functionaries while they held their positions in respondent, and of other events and occurrences predating and postdating the time of the filing of the petition.

49. Counsel for respondent moved at the close of petitioner's case to strike all evidence "relating to Communist Party membership of individuals or Communist activities and so forth prior to July 28, 1952," (tr. 5400) on the ground that such evidence was made irrelevant by the three year limitation period in the definition and evidentiary consideration sections of the statute (see tr. 5398-5406). Counsel also moved to strike "the evidence which post-dates the petition, unless you are willing to take the alternative that all evidence which is more than three years stale by the time at least of your preliminary report is out of date." (Tr. 5408.)² The motion was denied in a written ruling dated July 13, 1960 (supra).

¹ Respondent has consistently characterized charges of Communism as "Red Baiting" (see infra).

² Counsel raised the question of "Where does the three-year period begin, or looked at from another point, where does it end." (Tr. 5399.) Counsel then stated that, "For purposes of argument, I am first going to be taking the position, which I think is probably the correct position, that the three-year period is the three years prior to the date of the filing of the petition." (Tr. 5399.) The Hearing-Member agrees with that position. However, under the circumstances pertaining to this respondent, including, among others, the continuity in office for many years of the top leaders, and while much of the evidence fell within that period of three years, questions as to the meaning of the three year provisions are not of substantial importance.

50. The International Executive Board at the time of the filing of the Attorney General's petition and thereafter has consisted of 11 members (*infra*), (see also, e.g., M. M. Exs. 127 and 128). Six of the individuals who were members of the Board at the time of the filing of the petition, each of whom held office for varying numbers of years both before and after that time, were shown to have been members of the Communist Party or affiliated with the Party. Evidence of Communist Party membership was also presented as to two other individuals who had been members of the board for a number of years ending shortly before the time of the filing of the petition and who played important roles in shaping the current nature or status and characteristics of the organization. The evidence as to the Communist orientation of each of these eight will now be set forth.

51. Raymond Dennis - Board Member from 1950 and still
in office in 1960

(a) Petitioner's witness Gardner, then a member of the Communist Party, was employed in September of 1951 to become an International representative of respondent. He was employed by Raymond Dennis who was Board Member of District 3. Prior to accepting the position, Gardner had been visited by one Sam Reed who was the Communist Party organizer for the Communist Party branches within the Mine-Mill Union, the United Electrical Workers Union, and the Longshoreman's Union. Reed told Gardner that there was a vacancy as Mine-Mill International representative in the Cleveland area and that if Gardner accepted the position it would be "a wonderful opportunity for me [Gardner] to re-establish my Communist Party activities." (Tr. 4868.) Reed also told Gardner that if he accepted the job as Mine-Mill International representative he would be expected to assist the Civil Rights Congress and the Committee for Protection of Foreign Born. (Tr. 4869.)

(b) After being contacted by Sam Reed, Gardner was visited, around mid-August of 1951, by Reed and Raymond Dennis together. Dennis too told Gardner that as Mine-Mill organizer he would be expected to carry on some work with the Civil Rights Congress and the Committee for Protection of Foreign Born, "or any other organizations that the Communist Party might at that time be interested in." (Tr. 4865.) Dennis reminded Gardner that he was sure that Sam Reed had previously outlined in greater detail what Gardner would be expected to do regarding the Civil Rights Congress "and the other organizations of the party." (Tr. 4866.)

1 The membership of the Executive Board at the time of the hearing and pertinent facts as to vicissitudes on the Board will be considered later.

(c) Gardner accepted the position and worked out of District 3 office of Mine-Mill in Cleveland, Ohio. ^(TR 4869) A few months after he went to work, Gardner noticed in the files of that office a letter of Raymond Dennis' resignation from the Communist Party. ^(TR 4869-4870) This was in December of 1951 or January of 1952. ^(TR 4870) Gardner asked Dennis if he thought it was wise to let a letter of that sort remain in the files of the Union. Dennis replied that he could see nothing wrong with it because this letter was one that was sent out by all trade union officials who were members of the Communist Party at the time they signed a non-Communist affidavit under the Taft-Hartley Act, and was merely a protection that they had against any possible prosecution for membership at the time of signing. ^(TR 4871)

(d) While still in the Cleveland area, Gardner told Raymond Dennis that he had met with one Andrew Reams, an underground leader of the Communist Party, and Reams told Gardner to take up with Dennis, Gardner's working in behalf of a newly formed organization called the National Negro Labor Council. ^(TR 4872-74) Dennis advised Gardner that he was well aware of this, that he had also discussed Gardner's working with the NNLC with some of the underground Party leaders, and that he certainly wanted to emphasize the need for Gardner spending as much time as necessary to assure the success of that Council in Cleveland. ^(TR 4878)

(e) In April or May of 1952, Jesse Van Camp, then a Mine-Mill International representative, met with Gardner and told Gardner that he, Van Camp, felt he had gotten a "shoddy" deal out of Mine-Mill because at a Communist Party meeting he had agreed to surrender his position as Board Member for District 3 to Raymond Dennis, and that he had been promised that he would become regional director for District 3 but this had never taken place and he believed that Dennis was largely responsible. ^(TR 4879) A few days later, Gardner repeated this to Dennis at the Mine-Mill office. ^(TR 4880) Dennis told Gardner that he, Dennis, had also been at the Communist Party meeting where the decision for Van Camp to step down had been made, and that if Van Camp was dissatisfied he should have raised it at that Party meeting. ^(TR 4880)

(f) Around January of 1953 Gardner brought up with Dennis that Edith Lumer, ¹ an employee in the Union office in Cleveland was quite hostile to Gardner. ^(TR 4881-82) Dennis advised Gardner that this was a problem because Edith

¹ The transcript gives the name as "Edith Bloomer" but the Hearing-Member recalls that the witness said "Edith Lumer" and the record is hereby ordered changed to conform.

Lumer was the wife of a National leader of the Communist Party who was then operating underground, and that the Communist Party had assigned her to the job and would be quite reluctant to remove her since she needed an obvious source of income. (TR 4888)

(g) Dennis is one of the Mine-Mill officials who has been active in opposing anti-Communist proposals offered at Mine-Mill conventions (see infra).

(h) A number of the rank and file members who appeared as witnesses for respondent testified that they knew and had Union business with Dennis, that Dennis never told them he was a member of the Communist Party, and that he never asked them to join the Party.¹ Respondent's witness Duplessis testified that about November, 1959, at a meeting of Local 758, Dennis had stated in response to questions from the floor that he never was a member of the Communist Party. (TR 7331-32)

52. Irving Dichter - Board Member from 1955 until 1959
and Secretary-Treasurer 1959-60

(a) Petitioner's witness Rowena Paumi attended in early 1942 a closed Communist Party meeting at which a number of Mine-Mill people were present including Irving Dichter.^(TR 1482-83) The purpose of the meeting was to discuss issues coming up at meetings of Mine-Mill locals and there was also discussion about the Mine-Mill people in the Communist Party selling the Daily Worker and passing out a Daily Worker editorial that was about to be issued.

(b) In Mid-1943, Dichter told Paumi to go to one Mike Russo (a high functionary of the Party in Connecticut) to straighten out her confusion as to Communist Party policies, and thereafter Paumi became more active in the Party.^(TR 1483-84) Toward the end of 1948, Paumi saw Dichter at the Communist Party headquarters talking with Mike Russo.^{2 (TR 1541-42)}

¹ This type of testimony has been referred to supra. It was given, as indicated, generally as to the Mine-Mill officials who had been described by petitioner's witnesses as members of the Party and has been taken into consideration in each instance but will not hereinafter be repeated.

² Paumi could not recall on cross-examination whether she reported this to the F.B.I. (tr. 4683-4684; 4693-4694). Counsel for petitioner stated that all of Paumi's reports that mentioned Dichter's Communist activities had been produced (tr. 4688, 4690). There was no report that related that she saw Dichter at the Party headquarters in 1948. This situation, however, does not justify discrediting Paumi's testimony, particularly in the absence of denial by Dichter or Russo, or of any other rebuttal.

(c) Around the first part of 1953, petitioner's witness Kent attended a closed, secret meeting of the Trade Union Commission of the Communist Party in the basement of the home of Sam Richter, a member of the City Committee of the Communist Party of Bridgeport, Connecticut. Irving Dichter was among those present. The purpose of the meeting was to plan for getting Party members who were members of the C. I. O. elected as delegates to the coming C. I. O. convention, or to try to get people in the C. I. O. nominated as delegates who were sympathetic to the Communist cause or could be influenced by Party members. Dichter took part in the discussions. (TR 1708)

(d) In 1954, Kent was summoned to New York City and met with Sid Taylor, the chairman of the Communist Party of Connecticut. Taylor said the Communist Party in Connecticut was going to be reorganized and a new, concealed, State Board created to consist of Taylor as chairman and Bob Ekins, Jake Goldring, Irving Dichter and Kent. Subsequently, Kent attended meetings of this concealed Party Board at which Irving Dichter was present, first at the fourth meeting held in April of 1954. Dichter was also present at a subsequent meeting a few weeks later. A still later meeting was held, in New York City, on May 29, 1954, but Dichter did not attend, having first contacted Kent and told Kent that he was not well and gave Kent a report of his, Dichter's, to be given to Taylor, the Chairman of the Communist Party concealed Board. Shortly after the meeting started, the F. B. I. broke in and arrested everybody, including Kent. (TR 1716)

(e) Petitioner's witness Gardner was visited at his home in Butte, Montana, by Irving Dichter sometime in March of 1955. Dichter told Gardner that he, Dichter, was investigating Gardner's activities with a group that was identified with the ouster of Maurice Travis (see infra) and Gardner's activities in Mine-Mill. Gardner told Dichter that Bob Shrank, a Mine-Mill representative, had already spent considerable time discussing these matters with him. Dichter told Gardner that Shrank was given the assignment by the Union and would report back to the Union; that his, Dichter's, report would be far more serious because it was to go to the Rocky Mountain Region of the Communist Party and some kind of action would undoubtedly be taken on his report. During the discussions Dichter expressed disappointment that Gardner did not seem to realize that Mine-Mill was one of the last voices of the Communist Party within the trade union movement. It was not many weeks after this that Gardner was expelled from the Communist Party which was followed a few weeks thereafter with the termination of his employment with Mine-Mill. (TR 4943-44)

(f) Like Dennis (supra), Dichter has associated himself with the pro-Communist people in the Union (see infra).

53. Asbury Howard - Eastern Vice President from 1954
and continuing in 1960

(a) In the fall of 1957, petitioner's witness Fikes, then a member of the Communist Party, was sent by the Party from Alabama to Los Angeles, California. Fikes contacted Harold Wildman, a Mine-Mill International representative in the Los Angeles area at the Mine-Mill, Local 700, Union Hall. Fikes told Wildman that the Communist Party people in Alabama had told him to see the Mine-Mill representative in California, and that Wildman could verify who Fikes was through Asbury Howard or "Charlie" Wilson. (TR 5046-77)

(b) Later, Fikes met Chase Powers, the Mine-Mill Board Member for District 7 (found infra to have been a Communist Party member) and discussed with Powers an organizing campaign then going on at the American Brass Company. Powers told Fikes that Asbury Howard was coming to town shortly after the first of the year. Fikes said he would like to see Howard and had thought about writing him a letter. Powers told Fikes not to write a letter directly to Howard since Howard should not be getting letters from known Communists; that if Fikes wanted to write to Howard before he arrived in California to give the letter to Powers who would deliver it personally. (TR 5046-77)

(c) Around the first of the year 1958, in January or February, Fikes met with Asbury Howard at the Union hall in Bell, California. Fikes and Howard discussed persons both had known in the Communist Party. Howard told Fikes that he, Howard, had been in the Party for a long time but did not have contacts with local Party people and paid his Communist Party dues to the national office of the Union in Denver. (TR 5046-77)

(d) At this meeting between Fikes and Howard at the local union hall, Fikes told Howard that Pettis Perry wanted to meet with Howard and had asked Fikes to arrange a time and place since Perry did not think it wise for Howard to go to Perry's home. Fikes knew Pettis Perry as a member of the National Negro Commission of the Communist Party. Pursuant to arrangements, Fikes, Perry, and Howard met at Fikes' house for three hours or longer. (TR 5042)

(e) Asbury Howard, at this meeting, reported to Pettis Perry on what was going on in the South and the work Howard had been doing in mass organizations, the Church, the Voter's League, and the NAACP. Howard told Perry that it had been the Communist Party decision as far back as 1947 that Howard was not to have contacts with local Communist Party people. (TR 5042-43)

(f) In the summer or fall of 1953, Fikes met in Bessemer, Alabama, with Charles Wilson, then Mine-Mill Eastern Vice President. (TR 5042-43)

Wilson told Fikes about a recent Communist Party meeting at which there had been discussions about Wilson stepping down as Mine-Mill vice president, and at which Wilson had said that he would be willing to step down for Asbury Howard. (TR 5010) Fikes again met with Wilson, this time in 1954 after Howard had become a Mine-Mill Board Member. (TR 5022-23) Wilson told Fikes that he had felt that his stepping down was not the best thing in the world but he had no choice. (TR 5022) Wilson also told Fikes that Asbury Howard and Alton Lawrence (see infra) had raised the question with Communist Party officials, and also with Union officials, whether Wilson was a bad security risk in that he had known Communists in his house. (TR 5092)

(g) Petitioner's witness Homer Wilson testified on cross-examination that Asbury Howard had told him that he, Howard, was not a Communist Party member and Wilson had believed him, but, shortly before testifying in this proceeding, Wilson had spoken to Howard and told him that the Government people had the goods on him in that he had attended a meeting in Chicago in 1946 at which everyone present was a Party member. (TR 5401) So far as the record shows, Howard did not deny this. (TR 5401-406)

(h) Respondent's witness Jesse Gaines testified that Asbury Howard, in response to a point blank question, had told him that he did not belong to the Communist Party. (TR 7482) The date of the question does not appear.

54. Alton Lawrence - Board Member from 1950 until 1959

(a) Petitioner's witness Homer Wilson became Mine-Mill Board Member for District 5 early in 1943. (TR 725) Shortly thereafter the secretary in the District 5 office, a Mrs. Frantz, told Wilson that she was a member of the Communist Party and suggested that Wilson meet Rob Hall, her Communist Party organizer. (TR 754-60) Wilson went to Birmingham to have breakfast with Hall. Alton Lawrence, then a Mine-Mill International representative, and Mrs. Frantz were also present. (TR 760) The conversation revolved around the Communist Party and its activities in Alabama including its organizational work within the Union. (TR 762)

(b) Later, Wilson had several luncheons with Hall, Mrs. Frantz, and Alton Lawrence. (TR 763) These three pointed out the many ways that the Party had of helping an organizer, especially a Mine-Mill organizer, because the Party had contacts throughout the International Union. (TR 765) Wilson thinks the primary purpose of these meetings was to recruit him into the Communist Party. (TR 763) Alton Lawrence told Wilson that he, Lawrence, was a member of the Communist Party. (TR 765)

(c) Alton Lawrence subsequently went into the service but returned and went back on the Mine-Mill staff in late 1945. (Tr. 762) Wilson told Lawrence and also Mike Ross when they returned that he had gotten the locals in good shape and did not want any more of the Communist Party activity to disrupt the locals like they were when Lawrence and Ross left. (Tr. 765-766) Lawrence said the war had changed his way of thinking and he didn't believe the same way he did. (Tr. 766) According to Wilson, Lawrence did very well for a while but then "the old boys that he had been collaborating with before got hold of him" and he started back into Communist Party activities. (Tr. 769.)

(d) Sometime in 1954, after Charles Wilson had stepped down and Asbury Howard had become Mine-Mill Eastern Vice President, Wilson and Fikes met together at Fikes' home in Bessemer, Alabama. (Tr. 770-771) Charles Wilson, a Party member, said to Fikes, also a Party member, that he felt Asbury Howard was a stooge of Alton Lawrence and he didn't trust Lawrence but as long as Lawrence was in the Communist Party he would defend him. (Tr. 771)

55. Albert Pezzati - Board Member 1947-1954 - Secretary-Treasurer 1955-1959

(a) In 1954, while on Union business in Butte, Montana, petitioner's witness Gardner and Albert Pezzati roomed together at a motel. (Tr. 492-493) The two discussed the signing of the non-Communist affidavits under the Taft-Hartley Act and Pezzati remarked that he thought the Communist Party was wrong in waiting so long before permitting Party members in the leadership of unions to sign. (Tr. 492-493)

(b) Gardner and Pezzati also discussed Chase Powers, the Mine-Mill Board Member for District 7. (Tr. 493) Pezzati explained to Gardner the possibility of redistricting the Union in a manner that would cut into Chase Powers' district. (Tr. 493) Pezzati said that he felt the Communist Party was correct in attempting to protect Chase Powers' position. (Tr. 493) Pezzati, continuing, said that Powers had been the "warhorse" of the Communist Party within the leadership of Mine-Mill, and was to a very large extent responsible at one time for reestablishing the Party in the leadership of the International Union. (Tr. 493.)

(c) Petitioner's witness Moriarity testified that Pezzati was a political appointee (around 1946) of then Mine-Mill President Reid Robinson as an International representative and the membership in Connecticut accepted him reluctantly. (Tr. 493-494) At the time of the 1946 convention, Pezzati tried to win over Moriarity to the pro-Robinson side (see infra).

(d) At a Mine-Mill Board meeting in Denver in February of 1955, Pezzati was appointed to fill Travis' place as secretary-treasurer after Travis had proposed him as the man who most nearly reflected Travis' views. (GARDNER, TR 4936; MME 117, p. 3)

(e) Although it was apparently erroneously left out of the stenographic transcript, counsel for both sides agreed that on direct examination petitioner's witness Morales answered "Yes" to a question "Was Al Pezzati a Member of the Communist Party?" (See tr. 3936-3938.) Later in direct examination, Morales testified to the effect that he based his identification of Pezzati upon having heard him discussed at Communist Party meetings. (TR 5061) Morales knew Pezzati personally. (TR 5060) On cross-examination, it developed that in 1956, Morales testified before a Grand Jury in Denver that he knew Pezzati as a Communist Party member. (TR 4035)

56. Chase Powers - Board Member 1943 and continuing
in 1960

(a) Petitioner's witness Barbara Hartle, at the time a functionary in the Communist Party on the West Coast, knew Chase Powers as a Communist Party member in 1941 and 1942, and collected Party dues from him. (TR 5271-72) Hartle met with Powers and Harlow Wildman (a Mine-Mill International representative) and discussed with them Mine-Mill affairs and the Communist Party line in it. (TR 5320)

(b) In 1943, Powers told Homer Wilson that he was a member of the Communist Party and discussed the Party's activities within Mine-Mill International. (TR 771-777)

(c) In 1953, petitioner's witness Gardner, then a Party member working as a Mine-Mill International representative (supra), met Chase Powers at Wallace, Idaho, and Powers told Gardner that charges had been filed in the Party against Rudy Hansen, a Mine-Mill International representative, and that Gardner should isolate Hansen from the miners so that he could be more easily expelled from the Party. (TR 4697-98)

(d) Petitioner's witness Fikes met with Powers in 1958 and discussed with him Communist Party matters and Mine-Mill affairs; Powers told Fikes that the Party and Mine-Mill did not want any Party literature in the brief cases or in the motel rooms of Mine-Mill officials lest the Federal Bureau of Investigation find it there. (TR 5086 89)

(e) Mine-Mill official Pezzati considered Chase Powers one of the stalwarts of the Communist Party in Mine-Mill (supra).

57. Maurice Travis - Secretary-Treasurer, 1948-1955
(February)

(a) Petitioner's witness Homer Wilson had dealings in 1946 with Maurice Travis in connection with a secession movement of Mine-Mill locals in the State of Connecticut. Wilson complained to Travis that all of the International Union organizers that Travis was bringing into the area were Party men or persons who had at least been branded as Party men. Travis replied that these men had forgotten more about the class struggle than Wilson and any of the rank and file members would ever know. Travis told Wilson that the Communist Party had organized Mine-Mill in the first place; that they didn't intend to give it up; and, that either Wilson could go along with the Party or get out of Mine-Mill.

(b) The Eastern Edition of the official organ of Mine-Mill International on August 15, 1949, contained an article by Maurice Travis announcing that he had been a member of the Communist Party and had recently resigned in order to make it possible for him to sign the Taft-Hartley affidavit (A. G. Ex. 47, page 3).¹ Travis' article, however, indicated that his resignation was merely nominal and did not represent any change in his attitude toward the Party (see below). The Travis article contained the following:

. . . Membership in the Communist Party has always meant to me, as a member and officer of the International Union, that I could be a better trade unionist;
. . . .

* * *

. . . trade unions are an integral part of a Socialist society, the kind of society in which Communists believe. Therefore, I believe that good Communists are good trade unionists.

* * *

As a member of our International Union I have always been proud of and have drawn strength from its basic Socialist tradition. No other union in this country matches

¹ Findings on the issue within the Union over whether to comply with the non-Communist affidavit provisions of the Taft-Hartley Act are set forth infra.

ours in its glorious working-class history. Our union, and its predecessor, the Western Federation of Miners, has carried on some of the most bitter and courageous struggles in the history of the labor movement. I have always been inspired by the fact that early leaders of this union were socialistic in one form or another, that Bill Haywood also took the road to Communism and died not only as a great leader of the working class but as an honored and respected Communist.

Therefore, I want to make it crystal clear that my belief in Communism is consistent with what I believe to be the best interests of the members of this Union and the American people generally and that I am especially happy to be able constantly to remember that it is consistent with the finest traditions of the International Union. (A.G. Ex. 47.)

(c) In the latter part of 1949, Travis made a speech before Mine-Mill Local 392 in which he said he resigned from the Communist Party with reluctance and that he would still continue to believe in the principles and the practices of the Communist Party. (KIRBY, TR 2427-28)

(d) Petitioner's witness Kirby spoke with Travis at the 1949 Mine-Mill convention after Travis had signed the non-Communist, Taft-Hartley affidavit. Travis offered Kirby a place on the Mine-Mill Executive Board if Kirby would cease his opposition to the positions for which Travis had been working. Kirby asked Travis how he could sign the Taft-Hartley affidavit and Travis replied that all it meant was that at the moment of signing he was not a Party member. (TR 2432-34)

(e) In 1953, petitioner's witness Henderson heard a Mine-Mill member tell Travis he could not support him for secretary-treasurer of the Union because of his political beliefs, and heard Travis reply that: "I haven't changed my political beliefs any." (Tr. 2824-26.)

(f) In 1951, Travis told Gardner that he was very happy that Gardner had come with Mine-Mill since Gardner had come well recommended by the Communist Party. (TR 4581-82) In 1953 Gardner and Travis discussed the fact that key Communist Party people were involved in a factionalism dispute within Mine-Mill in Idaho. (TR 4545-46) Travis cautioned Gardner to remain aloof from this factionalism until such time as charges that had been filed with the Idaho State Committee of the Communist Party could have been heard and the individuals involved expelled from the Party. (TR 4876)

(g) At a Communist Party meeting which Gardner attended in 1954, he was told that a report was being written up on his part in a disputed strike settlement; that the report would be sent to the Rocky Mountain Region of the Communist Party and a copy sent to Maurice Travis. (TR 4915-16)

(h) In 1951 and 1953, Travis was elected International Secretary-Treasurer over petitioner's witness McLean who ran on an anti-Communist slate. (TR 9163 3164)

(i) Moralez attended a Communist Party meeting in 1955 at which Gardner was criticized for not supporting Travis more strongly, and a Party functionary said that the Communist Party had to do everything in its power to back Travis in Mine-Mill. (TR 3771-74)

58. Charles Wilson - Board Member 1947-1950 - Eastern Vice President 1951-1953

(a) In April or May of 1953, petitioner's witness Gardner made a trip to Port Colborne, Canada, in connection with the dedication of a Mine-Mill union hall. Charles Wilson was there in his capacity as Vice President of the International Union. Wilson called Gardner off to the side and told Gardner he was having some difficulty in making contact with Communist Party leaders in his area, and he was quite unhappy about it. (TR 4591) He said that subsequent to his agreeing at a Party meeting to step down so that Asbury Howard could become Eastern Vice President, the Communist Party appeared to stay away from him completely and to avoid him; he asked whether Gardner thought it was because of himself or because it was just a national situation; and, he wanted to know whether Gardner was having the same problem. Gardner assured him it was just a question of the times, that the Party functionaries were becoming more cautious and difficult to contact. (TR 4891)

(b) Charles Wilson also told petitioner's witness Fikes about the Communist Party meetings at which he was present and at which there were discussions of his stepping down so Asbury Howard could have the job. Wilson told Fikes that he was in the Party. In 1954, Wilson met with Fikes again and told Fikes that he, Wilson, was in difficulties with the Party which considered him a bad security risk because he permitted known Communists to come to his home. (TR 5689-92)

59. The International President of Mine-Mill, John Clark, has held the office continuously since 1948. He was not shown to have been a member of or affiliated with the Communist Party. However, his declarations and actions have been such, as will appear from the following summary of the

evidence, that the fact of his being president has not been inconsistent with Communist Party domination and control of the top leadership group in respondent.

(a) In 1947 there were major secession movements in the Union by members who considered the Union to be Communist controlled (see infra). John Clark was appointed by the Board to be acting secretary-treasurer to replace the one who had left. ^(Tr. 3037, 3038) Following investigation of charges of Communism in Mine-Mill, the C.I.O. made certain recommendations including that Maurice Travis be removed from International office (see infra). The C.I.O. recommendations were rejected by Mine-Mill International Board and instead the Board arranged for a special election of officers (see infra). Maurice Travis nominated John Clark for the office of president and Clark was subsequently elected. ^(A.G. Ex. 15, p. 250-251; H.C. Ex. 103) Travis was elected secretary-treasurer (infra).

(b) In 1949, Clark asked petitioner's witness Hain for suggestions on how to keep the Union intact and prevent secessions. ^(Tr. 3038) Hain's first proposition was that Clark should run for president on an "anti-commie" ticket and pick a committee to run with him. (Tr. 3037.) Clark was noncommittal, merely saying that in a few weeks he would get together with Hain and talk over the situation. ^(Tr. 3038) The next that Hain heard from Clark was a letter dismissing him from the Mine-Mill staff. ^(A.G. Ex. 35; H.C. Ex. 37) Petitioner's witness Gardner was fired in 1955 from his position on the Mine-Mill staff shortly after being expelled from the Communist Party (infra). On the other hand, as International President, Clark has hired as Mine-Mill staff members a number of persons who, the record shows, were members of the Communist Party (see infra).

(c) Maurice Travis in 1949 announced that he had been a member of the Communist Party and, although he had technically resigned in order to sign a non-Communist affidavit and thus remain an officer of the Union, he would continue his belief in and support of the Party (supra). Clark, in his report to the 1949 convention, paid tribute to Travis (A.G. Ex. 25, p. 249). The Clark report condemned the Government's "anti-Communist crusade" which had resulted in Travis revealing his Communist Party membership (p. 260), and Clark urged a policy of coexistence between the Soviet world and the western world rather than a victory of one over the other (p. 273).

(d) An instance evidencing Clark's support of Travis, if not dependence upon Travis, after Travis had revealed his Communist orientation was given by petitioner's witness McLean. In 1953, McLean and the officers of a Mine-Mill local in Montana met with Clark at their request in efforts to have Harlow Wildman (found infra to have been a member of the

Communist Party) and Ernest Salvas removed from the positions of International representatives in the area. ^(11L 5162 3174) Clark's only reaction was that he would go back and discuss it with Travis. ^(11L 5174 12) Another indication of Clark's support of Travis was the fact that at the 1953 convention Clark expressed friendship for all of the officers but singled out Travis as the only one he praised by name (A. G. Ex. 59, p. 212).

(e) Petitioner's witness Rasmussen was asked on cross-examination and replied that he had testified before a United States Senate investigating committee that Clark had collaborated and worked with known members of the Communist Party. ^(11L 952)

(f) Clark has consistently in his official reports and statements as president of Mine-Mill directed the organization in opposition to the foreign policies of the United States, in opposing the Federal laws designed to preserve the national security, and in opposition to moves within the Union to bar Communists from holding positions of leadership and trust (see infra).

(g) The C. I. O. in 1949 amended its constitution so as to bar from the C. I. O. executive board any member of the Communist Party or persons who consistently pursued policies and activities directed toward the achievement of the program or purposes of the Communist Party (infra). Thereafter charges were filed against Mine-Mill President Clark and the Union itself, and the C. I. O. concluded that Mine-Mill had been consistently directed toward aiding and supporting the Communist Party (infra). At the Mine-Mill convention after the Union had been expelled by the C. I. O., Clark, in his president's report, pointed out with approval that the Mine-Mill Executive Board had denounced the C. I. O. constitutional amendments against Communists and likened the C. I. O. barring of Communists to "the suppression of ideas that Wall Street does not like." (M. M. Ex. 123, p. 145.)

60. William Mason was a member of the Mine-Mill Executive Board from the 1940's until 1953. At the Mine-Mill convention in 1946, Mason spoke in opposition to a proposal which would bar Communists from holding office in the Union, and stated, among other things:

I want to say something that I have not said to any meeting of any local union or anybody or mentioned before. I have been a member of the Communist party for years. Several years ago I thought in my humble way that the Communist party should have emphasized

-- instead of taking the emphasis off--should have emphasized the teaching of socialism to organization, what it means. Because I felt that the Communist party was not doing that duty I dropped my membership in the Communist party. At the present time I am not affiliated with any political organization.

I want to say that maybe some day. . . I will join the Communist party organization again. I don't want any one to tell me that I have no right to represent the membership of my local union and be a member of a party that I choose to be a member of. (A. G. Ex. 10; M. M. Ex. 5, pp. 385 & 386.)

At the 1953 convention, Mason expressed strong opposition to what he called the complete control exercised in the Union by Maurice Travis and to statements Mason said had previously been made to him by Travis to the effect that the Soviet Union was right in shooting down political opposition (A. G. Ex. 59, pp. 224-225).¹ In 1954, Mason acted with others to secede from Mine-Mill and his office was declared vacant.² Respondent's witness Salvas succeeded Mason as Board Member for District 1 by appointment from President Clark which was thereafter confirmed by the International Executive Board. (SALVAS, TR 9553-54)

61. Ernest Salvas was a Board Member from his appointment in 1954 to succeed Mason until defeated in the 1961 election. Salvas was one of the International representatives that the Montana local wanted removed (supra) but instead of removing him the officers appointed Salvas a Board Member. The pertinent evidence as to Salvas was as follows:

(a) Petitioner's witness Morales attended, on September 21, 1953, a Communist Party meeting at the home of Harlow Wildman.^(TR 3619-3619A) Wildman at the time was a Mine-Mill International representative in Montana.^(SALVAS, TR 9475) The Communist Party meeting discussed working to get Salvas to replace William Mason as board member for the district,^(TR 3619A) and raising funds for Salvas' campaign.^(TR 3620) Wildman said he had or would donate \$100.00 for the Salvas campaign. (TR 3620)

¹ This is not considered or taken as proof of the facts but merely as Mason's stated reason for his opposition to Travis.

² Detailed findings are made in the following section on charges of Communism within the Union itself.

(b) A subsequent meeting of the Communist Party was held at Harlow Wildman's home on September 28, 1953. (TR 3622-26) Wildman discussed how unfriendly Bill Mason (Board Member) was toward Party members (TR 3626) and there was general discussion on the Party working harder to defeat Mason in the coming Mine-Mill elections (TR 3627) and get Salvas in office. At the meeting, John Hellman said that Party official Art Bary [not connected with Mine-Mill] had sent word that Moralez' name was to be kept out of Salvas' campaign as much as possible because Mason was already connecting Moralez with the Communist Party. (TR 3628)

(c) At a Communist Party meeting in 1954, attended by Moralez, there was discussion on how to keep control of Mine-Mill locals in Butte and Anaconda; one plan was to have assigned to the Mine-Mill staff in the area either Party members or persons that the Party could work with; Gardner was to be brought in from Idaho to work with Salvas and see that he followed the policy set down by the Party and didn't get off on the wrong road. (TR 3635-3636) Present at this Communist Party meeting were Mike Ross and Albert Skinner, Mine-Mill staff members, (TR 3634) Cozy Dolan who was in charge of Mine-Mill publicity in the area, (TR 3635) and John Hellman, (TR 3634) a Party official not in Mine-Mill.

(d) Gardner gave testimony corroborative of that given by Moralez and independently evidencing the Communist Party attitude toward Salvas. For instance, Gardner testified that after Salvas had been appointed board member to take the place of Mason, Al Skinner (then a Mine-Mill staff official and member of the Communist Party, infra) asked Gardner to come to Butte permanently since Salvas was a weak person and someone should ride herd on him to make sure the Party policies would be properly carried out in the area. Gardner agreed and was a Mine-Mill International representative in the area until about June of 1955, working under Salvas. (TR 4905-08)

(e) When certain of the Mine-Mill locals started efforts to force Travis out as an officer of the Union, Salvas worked in support of Travis (infra).

(f) Salvas appeared as a witness for respondent in this proceeding. He testified that he has never been a member of the Communist Party, (TR 5510) and there was no evidence connecting him with the Party. If he knew of and acquiesced in the backing given him in the Union by the Communist Party cannot be determined from this record. However, whether he was an innocent dupe for the Party or not, the fact is that his being a member of the Executive Board was, to say the least, acceptable to the Communist Party if not instigated by the Party, and it follows that his holding a position on the Executive Board has not been inconsistent with Communist domination of respondent.

62. The members of the International Executive Board at the time of the filing of the Attorney General's petition and the years both before and after (up to 1960) that time during which they held positions on the board were: Jose B. Chaves (1954-1957); John Clark (1947-1960); Raymond Dennis (1950-1960); Irving Dichter (1955-1960); Asbury Howard (1954-1960); Orville Larson (1947-1960); Alton Lawrence (1950-1959); Albert Pezzati (1947-1959); Chase Powers (1943-1960); Ernest Salvas (1954-1960); and Linus Wampler (1954 & 1955).¹

63. Of the above eleven members of the Executive Board, the facts found supra establish that six were members of or affiliated with the Communist Party, namely: Dennis, Dichter, Howard, Lawrence, Pezzati, and Powers.² In addition, Clark was shown to have an affinity for having Communists in the Union and his position as an officer has not been inconsistent with domination and control of the leadership by the Communist members. Also, the fact of Salvas being a member of the board has not been inconsistent with domination and control by the Communists, whether he realized it or not.³

64. Particularly in the light of the findings infra on the difficulties that have existed for many years within the Union itself over the issue of Communist orientation of the International officials and the effects in shaping the organization, it is pertinent to make findings and consider the vicissitudes on the International Executive Board from the mid-1940's to the time of the hearing.⁴

¹ The names of the members of the International Executive Board for various years appears at various places in the record, such as in the testimony and the convention proceedings. The information is also contained in a summary received in evidence without objection (tr. 9714) as A. G. Ex. 108 and 108A.

² Since 1955 there has not been a Board Member for District 4, the position held by Linus Wampler in 1954 and 1955, who was not shown as being a member of the Communist Party or in the categories of Clark or Salvas. The top leadership of respondent subsequent to 1955 has consisted of ten instead of eleven persons (see, e.g., M. M. Ex. 129, p. 297).

³ A number of respondent's witnesses who had been delegates to the Mine-Mill conventions testified that they, themselves, had no objection to Communists holding leadership positions in the Union.

⁴ The names of the office holders and the way in which they first acquired office have been based primarily upon petitioner's exhibit A. G. 108 and 108A and the examination of respondent's witness Stern. Where findings as to Communist Party membership or affiliation are made they are based upon the facts already set forth or set forth in subsequent paragraphs.

(a) International President

Reid Robinson, a Communist sympathizer, was International President for a number of years until he resigned in 1947 and was replaced by Communist Party member Maurice Travis. Later in 1947, Travis nominated John Clark, who was amenable to Communism, and Clark was elected. Clark has served as President continuously since 1948. (STERN, TR 695-76)

(b) Eastern Vice President

In 1947, Homer Wilson, who by his own testimony as a witness for petitioner had been cooperative with the pro-Communist group in Mine-Mill, was named by the Board to the newly created office of Eastern Vice President. Reid Robinson, a Communist sympathizer, replaced Homer Wilson in the subsequent referendum vote and held the office until he resigned in 1950. Communist Party member Charles Wilson was appointed by the Board to succeed Robinson. At the 1953 convention, pursuant to arrangements that had been made at a Communist Party meeting, Charles Wilson nominated Communist Party member Asbury Howard for the office and Howard has held the position since then.

(c) Western Vice President

Orville Larson, a progressive who supported Maurice Travis,¹ succeeded to the position in 1948 upon being appointed by the Board and continued in office until January of 1960, when Communist Party member Alfred Skinner was appointed by the Board.

(d) Secretary Treasurer

Communist Party member Maurice Travis was nominated at the 1947 convention and held the office through subsequent elections until 1954 or 1955, when he resigned.² Communist Party member Albert Pezzati was then appointed by the Board and remained in office until 1959. Communist

¹ In 1946, petitioner's witness Bush was invited and attended a "secret meeting" of the progressive element in Mine-Mill to discuss appointing Maurice Travis as a special assistant to International President Robinson. Orville Larson was among those present at this meeting. (Tr. 2572.) Larson continued to support Travis after Travis had announced his Communist Party membership.

² In the early 1940's, Maurice Travis was an International representative and regional director in the Northwest area; he was then made assistant to President Robinson in the International office. (STERN, TR 255, 411, 423.) For a period in 1945 or early 1946, Travis was appointed by the Board to serve as Board Member for District 7 while Chase Powers was in a sanitarium. (STERN, TR 696)

Party member Irving Dichter was then moved by the Board from Board Member for District 6 and appointed Secretary-Treasurer, and subsequently elected by referendum vote.

(e) Board Member for District 1

William Mason held this position in 1945 and continued until sometime in 1953 when he led a secession movement which terminated his relationship with the Union. Mason had been a member of the Communist Party but resigned and subsequently opposed the positions taken in the Union by Communist Maurice Travis. Ernest Salvias, whom the Communist Party considered to be amenable to them, was appointed by the Board to succeed Mason, and was subsequently elected by referendum vote.

(f) Board Member for District 2

Orville Larson, a progressive and supporter of Travis, was elected in the 1946 elections and held the office until September of 1948 when he was appointed Western Vice President. Chesley Smotherman was appointed by the Board to succeed Larson and was then elected in subsequent referendum votes until 1954 when he was defeated by Jose B. Chavez. In 1958, Chavez was defeated in an election by Communist Party member Al Skinner who held the position until 1960, when he was appointed Western Vice President and Vern Curtis was appointed by the Board to be Board Member for the district.

(g) Board Member for District 3

Angelo Verdu, who held this position, led a secession movement in 1947 which terminated his relationship with the Union. Communist Party member Jesse Van Camp was appointed to succeed him. In 1949, pursuant to arrangements made at a Communist Party meeting, Van Camp nominated Communist Party member Raymond Dennis for the office and Dennis has held it since that election.

(h) Board Member for District 4

This position has not been filled since 1955 because of decision that there was not enough membership in the District to warrant a board member. Linus Wampler held the office in 1954 and 1955, having been appointed by the Board. The office was vacant for a number of years prior to 1954.

(i) Board Member for District 5

Homer Wilson, who had been cooperative with the pro-Communist faction in the Union, held this office in 1945 and until 1947 when he was appointed Eastern Vice President. At that time, Communist Party member Charles Wilson was appointed to the vacancy as District 5 member and remained in office until appointed Eastern Vice President in 1950 upon Homer Wilson's resignation. Communist Party member Alton Lawrence was then appointed to replace Charles Wilson and held the office until he resigned in 1959, and M. C. Anderson was appointed.

(j) Board Member for District 6

John Mankowski was in this office in early 1947 when he led a secession movement which terminated his relationship with the Union. By appointment of the Board, Communist Party member Al Pezzati replaced Mankowski and remained in office until appointed Secretary-Treasurer in 1954. Communist Party member Irving Dichter was appointed to succeed Pezzati as Board Member and Dichter held the office until he was appointed Secretary-Treasurer in 1959 at the time of Pezzati's resignation. Alfred Petit-Clair was then appointed.

(k) Board Member for District 7

This position has been held continuously by Communist Party member Chase Powers except for a short period in 1945 or 1946 when Communist Party member Maurice Travis was appointed to take his place during an illness.

65. From the foregoing it develops that from about 1945 a total of 25 positions have been filled on the Executive Board and at least 16 of the individuals involved originally acquired their leadership positions by appointment.¹ Of the 16 appointments made, nine were given to persons

¹ According to the stipulation received after the hearing had ended (supra) all of the officers and executive board members holding the positions in 1960 were reelected in May of 1961, except that Barney Rusk was elected Board Member for District 1, Maclovio Barraza (found infra to have been a member of the Communist Party) was elected Board Member for District 2, and James R. Buck was elected Board Member for District 7.

who were members of the Communist Party,¹ two were given to persons shown on this record to have been at least cooperative with the Communist Party,² and one to a person whom the Party wanted and considered cooperative.³ In addition, there were two instances where the officials who first obtained office by election were members of the Communist Party and it was decided at Party meetings prior to the nominations that the incumbents, who were also Party members, would relinquish their offices in favor of the successors.⁴

Staff Members

66. In addition to the International Executive Board, the affairs of the Union have been administered and carried out with the help and assistance of various persons designated as staff members (supra). The more important have been an Editor of the Union paper, a Research Director, and the International Representatives or organizers (supra). The evidence as to Communist Party affiliation on the part of various staff members will now be considered.

67. From 1945 until at least the fall of 1955, the Editor of the Union official organ was Morris Wright.^(TR 3069, 3070-3081) Petitioner's witness Duran knew Wright as a member of the Communist Party in the 1950's and attended Communist Party meetings with him.^(TR 3069, 3070-3081) Duran first met Wright at the Mine-Mill headquarters in Denver.^(TR 3067-3068) On either the last day of 1954 or the first day of 1955, a New Year's Eve Party was given at the home of Morris Wright attended by a number of Communist Party members to celebrate the fact that one Alfredo Montoya had become an International representative of Mine-Mill.^(TR 3063-3064) Duran knew Montoya as a member of the Communist Party.^(TR 3067)

68. In 1955, Graham "Cozy" Dolan succeeded Wright as Editor of the Union newspaper, under the supervision of Al Pezzati.^(S/ERN, TR 6908-09) Findings on the Communist Party affiliation of Pezzati have been made supra. There is considerable evidence of Dolan's activities as a member of the Communist Party, the more important of which will now be set forth. At a meeting

¹ Dichter (two different appointments), Lawrence, Pezzati (two different appointments), Skinner, Van Camp and C. Wilson (two different appointments).

² Larson and H. Wilson.

³ Salvas.

⁴ Party member C. Wilson stepped down as Eastern Vice President and nominated Communist Asbury Howard at the 1953 convention, and Van Camp in 1949, stepped down in favor of Raymond Dennis as Board Member for District 3.

of a Communist Party group attended by petitioner's witness Moralez, at which Hellman, Gardner, and Dolan were present, Dolan gave a report on Lenin's book "What Is To Be Done"; he emphasized that the intellectuals would be the leaders in the Communist Party, not the working people. (TR 5326-36) At a Party meeting on December 21, 1954, Moralez was present during a discussion between Dolan and Hellman about Gardner; Dolan said he was going to have Gardner investigated because he was going against the Mine-Mill line, and that he, Dolan, had the power to get Gardner fired. (TR 5326-36) Petitioner's witness Gardner also attended Communist Party meetings in the mid-1950's where Dolan was present and took an active part; at one of the meetings Dolan criticized Gardner for taking an anti-Communist Party position in a Mine-Mill matter. (TR 5326-36) Dolan was present at the first Communist Party meeting that petitioner's witness Carmen P. Wilson attended, which was in the early 1940's. (TR 1416-17) Wilson subsequently attended other Party meetings with Dolan, at one of which the discussion was on the Mine-Mill organizing drive at the Remington Arms plant - this was in the summer of 1944. (TR 1416-17) At this time, Dolan was in the Editorial Department of Mine-Mill. (TR 1416)

69. The Union newspaper has been an important link between the Mine-Mill leadership and the rank and file members, and so considered by the Union officials. (TR 6568-69) Over the years there has been strong criticism of the Union paper by the anti-Communist people in Mine-Mill (infra) and the paper has often advanced positions similar to the positions taken by the Communist Party, including positions on the foreign affairs of the United States (infra).

70. According to respondent's witness Stern, Mine-Mill research director, there has not been an Educational Director since 1952 but there was one between 1947 and 1952; the first one was Dolan (found above to have been quite active in the Communist Party) whose activities were later merged with publicity and editing the Union paper. (TR 6569)

71. Bernard Stern, the Mine-Mill Research Director, first joined the staff in 1945 after having been interviewed by then President Reid Robinson. (TR 6569-70) Petitioner did not present any witness who gave testimony showing that Stern had been in, or affiliated with, the Communist Party.

I According to Stern, the function of the Research Department is to provide factual and technical information for officers and staff in carrying out their union activities, such as providing economic information on conditions in particular industries and companies, bargaining trends, and what other unions are doing in the field. (TR 6568-69) His department carries out work in the whole field of health and safety. (TR 6569-70) The department analyzes and advises on all industry legislation, Federal and State. (TR 6570)

Stern testified that he was not at the time of testifying a member of the Communist Party; he refused to answer on constitutional grounds whether he had been a Party member during the years 1948 until 1960 (tr. 7039-41).¹

72. The International representatives have comprised a quite large category of staff members. Perhaps as many as a hundred or more persons were mentioned in the testimony as International representatives at one time or another. A list of staff members and clerical employees hired during the years from January 1, 1946, to October 1, 1960, was put in evidence by respondent (M-M Ex. 156). It includes around 400 names of staff members although a good many were hired for only a few days or weeks. Taking the years from 1952 through 1959, both inclusive, and taking those who served as International representatives for at least seven or eight months, the list shows some 65 persons.

73. Neither party presented any proposed finding or argument directed precisely to the extent that Communist Party members have been hired as International representatives. Petitioner by the testimony of his witnesses showed that throughout the years many International representatives have been Communist Party members, and these were included in petitioner's proposed findings. Like the situation with the Executive Board members (supra) none of the persons who were identified by petitioner's witnesses as International representatives and members of the Communist Party as well appeared to deny the evidence.

74. The International representatives who were shown to have been members of the Communist Party will now be set forth. The names of some also appear in the findings already made. The dates in parentheses following the names are the dates of employment as shown by respondent's exhibit 156; Maclovio Barraza (6/16/52 to date),² Raymond Dennis (became Board Member, see supra); Irving Dichter (became Board Member, see supra); Graham Dolan (various staff assignments from 11/6/47 to 10/31/59); James Dougherty (1/21/52 to date); James Durkin (8/11/52 to 12/31/55);

¹ No considerations adverse to Stern are warranted because of his use of the Fifth Amendment provision against self-incrimination. He also invoked the privilege on whether he knew various named officers of Mine-Mill to be Party members, such as Dichter and Skinner, whether the Communist Party had a position on Taft-Hartley compliance, and then changed its position; and, whether he knew any of the Mine-Mill staff including the International representatives to be members of the Communist Party. (TR 8223-25)

² Elected Board Member for District 2 on May 17, 1961, for a two year term. (STIPULATION, TR 4724)

Kenneth Eckert (member of the Executive Board, 1946-1948); Forrest Emerson (not on M-M Ex. 156); Sam Feldman (2/12/47 to date); Jack Flaherty (prior to 1/1/46 to 3/20/50); Art Flores (2/1/51 to 12/31/53 and part of 1954); Fred Gardner, petitioner's witness (8/27/51 to 7/15/55); William Gately (in 1947, 1948 and 11/1/48 to 3/31/60); Elwood Hain, petitioner's witness (June, 1946 to 6/7/49); Rudy Hansen (at times in 1954 and 1955); Don Harris (few Months in 1948); Matt Hill (not on M-M Ex. 156); Lowell Hollenbeck (part of 1947); Henry Horowitz (6/3/46 to 7/31/51); Asbury Howard (became Board Member, see supra); George Knott (prior to 1/1/46 to 4/15/49); Alton Lawrence (became Board Member, see supra); Howard Lee (prior to 1/1/46 to 12/31/49); Ray Lee (short period in 1955); Duke McKenna (4/7/48 to 8/20/49); Alan McNeil (not on M-M Ex. 156); Alfredo Montoya (2/9/54 to 9/30/55, period in late 1959, period in early 1960); Arthur Morales, petitioner's witness (2/1/54 to 3/27/54); Harvey (Dennis) Murphy (3 months in 1950); Jesse Nichols (prior to 1/1/46 to 9/10/48 and 10/16/50 to 2/15/51); Albert Pezzati (became Board Member, see supra); Peter Piekarski (few months in 1954 and again in 1955); Chase Powers (became Board Member, see supra); William Quill (prior to 1/1/46 to April 1947); Henry Rapuano (11/16/48 to date); Mike Ross (9/19/52 to 9/30/55); Bob Schrank (2/1/52 to 9/15/55); Bob Shriner (not on M-M Ex. 156); Al Skinner (became Board Member, see supra); Cal Sutherlin (not on M-M Ex. 156); Maurice Travis (became Board Member, see supra); Jesse Van Camp (dates not given on M-M Ex. 156); Maurice Wechsler (not on M-M Ex. 156); Harold Wildman (prior to 1/1/46 to 12/31/58); Charles Wilson (became Board Member, see supra).

75. The above findings show that consistently throughout the years from at least January 1, 1946, and continuing through at least 1959, there have been a substantial number of Communist Party members who were hired by Mine-Mill and worked as International representatives.

76. Careful consideration has been given to the question whether the facts of Communist Party membership and membership on the Mine-Mill International staff might have been mere coincidences. As will appear, the reasonable conclusion from this record must be in the negative.

77. An important consideration has been the Communist Party meetings attended by these people for discussing and planning programs and activities in connection with the Union.¹ The evidence consisted of the testimony of petitioner's witnesses who were themselves members of the Party and

¹ Many of the members of the International Executive Board have themselves attended and participated in meetings of the Communist Party. (Supra.)

participated in the particular Party meetings. The summaries that follow will be made by witnesses. In some instances Mine-Mill clerical employees were present at the Communist Party meetings attended by petitioner's witnesses, and will be included with appropriate identification. To avoid unnecessary repetition, the names of persons who were Mine-Mill International representatives at Communist Party meetings will be capitalized and the names of those who were Mine-Mill clerical employees will be underscored.

78. Petitioner's witness Duran. Attended the Colorado State convention of the Communist Party in December of 1950, which was held at the home of MIKE ROSS.^(TR 3648) One of the teachers at classes or meetings of the National Mexican Commission of the Communist Party, held at a Party school in Los Angeles in the latter part of 1950, was ALFREDO MONTOYA; the purpose was to educate those present on how the theory of Marx and Lenin could be put into practice in the Southwestern United States; the National Chairman of the Mexican Commission introduced ART FLORES as a labor leader in Mine-Mill and a person they were very fortunate to have in the National Mexican Commission of the Communist Party.^(TR 3651-3652) Duran met Virgil Akeson at a County Committee meeting of the Communist Party in Denver in May of 1951, and attended subsequent Party meetings at Akeson's home; one of these was in March of 1952 with representatives of the Colorado State Committee at the Party at which Akeson checked security.^(TR 3659-3660) M-M Exhibit 156 lists Virgil Akeson as a clerical employee from prior to January 1, 1946, and still there as of October 1, 1960.^(TR 3661-3662) Duran knew MORRIS WRIGHT as a member of the Communist Party and Wright attended a closed Party meeting at Duran's residence in November of 1953.^(TR 3663-3664) ALFREDO MONTOYA was among those present at this Party meeting.^(TR 3665-3666) Mine-Mill Exhibit 156 lists MORRIS WRIGHT as a staff member from prior to January 1, 1946, until November 30, 1955.

79. Petitioner's witness Gardner. During the period from April of 1954 to May or June of 1955, while GARDNER was in Butte, Montana, as a Mine-Mill International representative, he was a member of a Communist Party group composed of John Hellman, the Communist Party organizer for the State of Montana, and for northern Idaho, GRAHAM DOLAN and ARTHUR MORALEZ.^(TR 4907-08) This Communist Party group met on various occasions to discuss Mine-Mill matters and to plan the approaches and actions to be taken.^(SEE EG, TR 4913-16, 5053) In February of 1955, GARDNER attended a Communist Party meeting in a hotel room in Denver, Colorado.^(TR 4952) JAMES DURKIN and then ALBERT SKINNER notified GARDNER of the meeting, and SKINNER said the purpose of the meeting was to discuss for the Rocky Mountain Region of the Party certain activities of GARDNER as a Mine-Mill representative. Present

were HAROLD SANDERSON, James Dirksen, JAMES DOUGHERTY, ALBERT SKINNER and GARDNER. In either January or February of 1955, immediately after a meeting of the Mine-Mill leadership in the Butte area, there was a Communist Party meeting with DOLAN, MORALEZ, GARDNER and Communist Party official John Hellman present. DOLAN stated that GARDNER had played an anti-Communist Party role at the previous meeting of the Mine-Mill leadership, and Hellman advised there should be more discussion in the future. (TR 4933-35)

80. Petitioner's witness Hain. During the year 1946, Hain was asked by Art Steward and Hank Boswell, members of a Mine Mill local, to drop in at a Communist Party meeting, which he did; among those present was HOWARD LEE. Later, in the spring of 1947, Hain signed up to join the Party at a meeting where HOWARD LEE was again present and told Hain not to sign his real name to the Communist Party card; Hain made his first initiation fee payment to LEE. At the same meeting, HOWARD CASE also signed up to join the Party. Mine-Mill Exhibit 156 lists HOWARD CASE as a staff member from August of 1946 to April of 1947. (TR 3005-08)

81. Petitioner's witness Kent. In 1954 Kent was appointed a member of the State Concealed Board of the Communist Party of which IRVING DICHTER was also a member. Previously, in 1953, Kent attended a meeting of the Trade Union Commission of the Communist Party and IRVING DICHTER was present and took an active part. (TR 1705-68)

82. Petitioner's witness Moralez. In July of 1952, MORALEZ was appointed a member of the Communist Party Regional Committee and attended meetings during 1952, 1953 and 1954. This committee was appointed by Art Bary, the Director of the Communist Party Rocky Mountain Region, and the other members in addition to Moralez were AL SKINNER, LOUIS JOHNSON (shown as a Mine-Mill staff member on Mine-Mill Exhibit 156), PETER PIEKARSKI, GORDON DOUGLAS, and John Hellman. At one of the meetings of the Party Committee reports were given by Party members from various regions in the area on Communist Party and Union problems, and there were discussions on Party schools, recruiting, and finances; the Party wanted to recruit as many members as possible from the local unions and have Party members active on different committees of the local unions. At another meeting, held in April of 1953 at Idaho Falls, with AL SKINNER, GORDON DOUGLAS, and John Hellman present, reports were given on the local unions and Party functions in the Union were discussed. At a meeting of this Party Committee held at Missoula, Montana, in the spring of 1954, the others present were John Hellman, LOUIS JOHNSON, and PETER PIEKARSKI; this meeting was concerned with discussions of Mine-Mill and certain of its leadership, one topic was the possibility of Mine-Mill (TR 3549-58) (TR 3571-74)

going into the American Federation of Labor since it was a good idea to be getting into the mainstream of labor, another topic was having AL SKINNER replace MAURICE TRAVIS as a Mine-Mill International Official. Other discussion at this meeting was on the need to set up a school for advanced Communist pupils with LOUIS JOHNSON as the teacher. (TR 3544-3600) (TR 3549)

83. Morales attended a Communist Party meeting in Butte, Montana, in 1952, of what was called the Mine-Mill Committee. Present were Ray Graham (Mine-Mill local member), HARLOW WILDMAN, John Hellman, RAY LEE, and Lee Clark. The purpose was to discuss how the Party members were to operate in the Union and what was to be done about Union problems. Among other Communist Party meetings attended by Morales, those who also were present, and some of the subject matters were: a meeting during a Mine-Mill secession movement in Butte, present were LOUIS JOHNSON, AL SKINNER, and John Hellman, discussed the secession movement, putting Party members on the Mine-Mill staff, and bringing FRED GARDNER into the area; a meeting also during the secession movement in 1954, present were MIKE ROSS, John Hellman, ALBERT SKINNER, and GRAHAM DOLAN, purpose was to plan a way to keep control of Mine-Mill locals, and there was discussion of putting on GEORGE KALAFATICH as an International representative since he was a possible recruit into the Communist Party. (KALAFATICH is shown on Mine-Mill Exhibit 156 as a staff member from June 1954 to date - there was no evidence that he in fact joined the Communist Party); various meetings, also testified to by GARDNER, see supra, in connection with a controversial strike settlement, present were John Hellman, GRAHAM DOLAN, and GARDNER - at one of the meetings Hellman stated that the Communist Party would back Mine-Mill right or wrong because through Mine-Mill the Communist Party had a foothold into labor, at another meeting Hellman stated that if the Party lost its foothold in Mine-Mill it would set the Party back many years, at another meeting DOLAN gave a report on Lenin's book "What Is To Be Done," and the coming Mine-Mill convention was discussed. There were other Communist Party meetings attended by MORALEZ involving one or more of the persons covered in the meetings set forth and no purpose would be served in detailing them. (TR 3613-14) (TR 3616) (TR 3632-16) (TR 3633-37, 3975, 4051-38) (TR 3753-3836)

84. Petitioner's witness Paumi. Attended a closed Communist Party meeting in 1942 with some members of a Mine-Mill local present as well as IRVING DICHTER and CAL SUTHERLIN; the purpose was to discuss issues coming up at the meeting of the local, and to plan for distributing the Daily Worker. (TR 1482-83)

85. Petitioner's witness Carmen Wilson. In late 1942 Carmen Wilson was employed as a secretary in the South Denver office of Mine-Mill and

shortly thereafter, at the suggestion of certain Mine-Mill staff members at the office, joined the Communist Party and was assigned to the Trade Union Branch of the Party.^(TR 142-09) The first Communist Party meeting that she attended was held at the home of either FORREST EMERSON or RAY LEE.^(TR 142-10) Present, in addition to Carmen Wilson, were: FORREST EMERSON, HAROLD SANDERSON, GRAHAM DOLAN, Mrs. Eunice Dolan, MATT HILL, RAY LEE, Chuck Binna, Ed Bouche, and ALAN MCNEIL.^(TR 142-11) The substance of the discussion concerned a big organizational drive by Mine-Mill at the Remington Arms plant in Denver.^(TR 142-12) The chairman of the meeting was ALAN MCNEIL and he told the group that even those present such as Binna and Bouche who were members of other unions were to assist as much as possible in the Mine-Mill organizing drive at Remington Arms.^(TR 142-13) Carmen Wilson attended subsequent meetings of this Communist Party branch, some at RAY LEE's home, some at FORREST EMERSON's home, and some of them at GRAHAM DOLAN's home.^(TR 142-14) Later, at a closed meeting of the Communist Party branch attended by HAROLD SANDERSON, Mr. and Mrs. GRAHAM DOLAN, FORREST EMERSON, Chuck Binna, Ed Bouche, and Carmen Wilson, there was strong criticism of the way in which FORREST EMERSON was conducting the campaign to organize the Remington Arms plant and he was informed that he had failed as a member of the Communist Party.^(TR 142-15) This was in the spring of 1943.^(TR 142-16) About six weeks after this meeting, FORREST EMERSON left his employment with Mine-Mill,^(TR 142-17) and told Carmen Wilson, who expressed sympathy to him, not to show her sympathy for him because if she did she would lose her job.^(TR 142-18) Carmen Wilson attended a meeting of the Communist Party in late spring or early summer of 1944, together with Ed Bouche, GEORGE KNOTT, Grace Peterson, HAROLD SANDERSON, GRAHAM DOLAN, Eunice Dolan, Chuck Binna, Mrs. Art Bary, and the heads of other branches of the Communist Party.^(TR 142-19)

86. Other considerations, in addition to attendance at Communist Party meetings involving Mine-Mill activities, appear later, and are pertinent in showing that membership in the Communist Party of Mine-Mill staff personnel was more than a mere coincidence. The dual membership and interrelated activities are, of course, pertinent to the ultimate issues in this proceeding.

¹ Counsel for respondent objected to this and all other evidence presented by petitioner before the three year period fixed in the statute. (See supra, and also tr. 1436-38.) Aside from the admissibility as background, in this and other instances, the evidence was connected up by subsequent evidence. For instance, subsequent evidence connected Harold Sanderson as a Mine-Mill staff member up to and during the hearing. (BUSA TR 2575, GARDNER, TR 4573-74; HENDERSON, TR 2822; BROWN, TR 5747, BACK, TR 9045, 4100, 4105-07; BUCKNER, TR 8327-28, 8320, 8352-53, 8357-58; CHURCH, TR 2224-26; CULMAN, TR 5575)

87. In the findings already made certain Mine-Mill clerical employees are included as Communist Party members. These and other International clerical employees who were shown to have been members of the Party were: Virgil Akeson, as to whom there was evidence of attending Communist Party meetings during 1951 and 1954, and who was still an office employee of Mine-Mill on October 1, 1960; Mrs. Frantz, secretary of the Mine-Mill District 5 office in 1943; Edith Lumer, an office employee during 1951-1955, was not shown to be a member of the Party but was the wife of a National Officer of the Communist Party and had been assigned her job in Mine-Mill by the Party; Anthony Morton, a Mine-Mill employee from early 1954 and still with the Union on October 1, 1960, was shown to have been at a meeting of the Colorado State Committee of the Communist Party in 1952, and at other Communist Party meetings in 1954-1955; Grace Peterson, who acted as an assistant to a Mine-Mill organizer in the 1940's, joined the Communist Party after being employed by Mine-Mill and was present at Party meetings in the 1940's; Ben Riskin, a Mine-Mill research director in the early 1940's, was not shown to have attended Communist Party meetings but it was established that he was forced out of the Union on charges of being a Communist at a time when the anti-Communist faction had a certain amount of power (see infra).

88. The various conclusions which are indicated from the facts found in this section are best considered in the light of the facts to be found in subsequent sections and will, therefore, appear later.

C. The Communist Party of the United States

89. Before considering additional aspects of the evidence on Communism in respondent, findings will be made on the policies and practices of the Communist Party of the United States as to labor unions in general and Mine-Mill in particular, and the reactions of certain Mine-Mill people to Communism.

90. The un rebutted and uncontradicted evidence of record showed that the teaching and doctrine of the Communist Party has been that society is divided into two main contending classes - the bourgeoisie and the proletariat - and that these classes are in irreconcilable conflict. Proletariat is a term for the working class, the proletarian is a worker. Under this teaching and doctrine

Many facts evidencing domination and control of Mine-Mill by Communists, and evidencing aid and support of the Communist Party by Mine-Mill and its leadership, in addition to the findings already made and made in this section, will appear in subsequent sections. A separate section will then be devoted to considering in more detail the evidence presented by respondent.

of the Communist Party the United States is a bourgeoisie state - a state of the capitalist class - and Party doctrine is that it is the mission of the working class, led by the Communist Party to forcibly overthrow this bourgeoisie state. The Party depicts itself as the instrument of the working class for the overthrow of the capitalist class, and for the establishment of the dictatorship of the proletariat - the forcible suppression of the capitalist class in order that the working class, led by the Communist Party, will rule. (H.P. 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000)

91. On the basis of an order of the Subversive Activities Control Board issued on April 20, 1953, and the opinion of the Supreme Court of the United States rendered on June 5, 1961, in Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1, rehearing denied 30 L.W. 3115, official notice is taken that the Communist Party of the United States is a "Communist-action organization" as that term is defined in section 3 of the Subversive Activities Control Act of 1950, as amended. Accordingly, it is a "Communist-action organization" for the purposes of section 3 (4A) of the Act.

92. The evidence in this proceeding established that the program of the Communist Party has been to gain control of labor unions. The Party has looked upon labor unions as organizations of the working class through which the Party can work, and the Party has put great stress on labor unions as most important for carrying through the aims of the Party. (H.P. 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000)

93. (a) The findings supra and in following sections contain many instances of specific attention given by the Party to Mine-Mill. These findings include discussions and planning in connection with Mine-Mill at Communist Party meetings attended by Party members holding office in Mine-Mill and by Party functionaries not in Mine-Mill.

(b) Of the more general expressions of the Party's policy toward Mine-Mill the record contains the following, among others: Irving Dichter, in 1954, while meeting in connection with a strike settlement, referred to Mine-Mill, in a conversation with Gardner, as one of the last voices of the Communist Party in the trade union movement and stressed the necessity of approaching Mine-Mill affairs in a political way.¹ In 1947, Ralph Shaw, at a meeting attended by Elwood Hain, answered a question from Hain about Communist Party and Mine-Mill policy by stating that Mine-Mill would deteriorate without the guidance of the Communist Party. Years later,

¹ The expulsion by the C.I.O. in 1950 of Mine-Mill and certain other labor unions (infra) on the ground, insofar as C.I.O. was concerned or thought, that the expelled unions were Communist orientated could have contributed to Dichter making this remark.

around mid-1954, Hain was present at a discussion between Mine-Mill functionaries James Dougherty and Tim Finley during which Dougherty, a member of the Communist Party, stated that the salvation of the country was for the Communist Party to take over.^(TR 2813-19) The witness Kent attended a meeting of the Trade Union Commission of the Communist Party in early 1953 at which Mine-Mill official Dichter was also in attendance.^(TR 1715-24) The purpose of the meeting was to have those who were not C. I. O. members to try and get C. I. O. members that they knew to have people sympathetic to the Communist Party nominated as delegates to the C. I. O. convention.

(c) In September of 1952, Morales attended a meeting of a Communist Party regional committee at which the discussions included recruiting as many people as possible from the Mine-Mill local to become members of the Communist Party, and getting Party members active on various Union committees.^(TR 3571-58) Morales attended other Communist Party meetings in the period 1952-1954 where the discussions were on getting Mine-Mill into the A. F. L. or the United Mine Workers.^(TR 3568, 3571-74, 3594-98, 3612-16, 3781-63) At one of these meetings, Party functionary John Hellman, not in Mine-Mill, remarked that the United Mine Workers would not take Mine-Mill unless Mine-Mill got rid of the International officers who were Party members and if that happened, the Communist Party would lose its foothold in Mine-Mill which would set the Party back thirty years.^(TR 3764-63) In 1946, Travis replied to the complaints of Homer Wilson about sending Communists into Connecticut as Mine-Mill organizers by telling Wilson that the Communist Party organized Mine-Mill in the first place and was not going to give up, and Wilson could go along with the Party or get out.

94. The evidence of record shows that the Communist Party has had the policy and program to work very hard to elect Party members as officers in unions, and to also work hard to elect persons who, although not Communists, are amenable to Communism and work along with Communists. (HARTLE, TR 5268)

95. The findings that have been made under the heading "Communists in the Leadership of Respondent" show that to a marked and substantial extent the officers of respondent have at all times numbered many members of the Communist Party and others who, although not shown to have been Party members, were clearly amenable to Communism.

96. The evidence of record shows that the Communist Party has sought to gain control of labor unions through recruiting members out of them; getting Party material to them; and, having Party members active in the unions and working very assiduously on measures of interest to the general union membership and in the course of that raise the education of

the workers and show them that it is not enough to get higher wages, show them who their enemy is and how to overcome the enemy and establish a Communist system. (HARTLE, TR 5267-65)

97. The foregoing finding must be considered in connection with the continuing practice, found infra, of the International officers of Mine-Mill in advancing and having Mine-Mill adopt policies and take positions on international political affairs and positions in opposition to the laws of the United States, which laws have as their purpose to prevent world Communism from achieving its aims in the United States. The continuing advancing by the Mine-Mill officers of the position that big business or the capitalists in the United States are the enemies of the working class is in line with the aims of the Communist Party as found above.

98. The rank and file members of the Union presented as witnesses by respondent clearly established that a large majority of the persons who were members of the Union at the time of the hearing were satisfied and in some instances enthusiastic with the gains in wages, hours, and working conditions that had been achieved while members of Mine-Mill.¹ Most if not all of the more than 100 rank and file members who testified for respondent showed from their testimony that the officers of respondent, who were shown on this record to be members of the Communist Party or working with the Party, have gained the support and confidence of the witnesses, none of whom were themselves Party members. A rather uniform theme of the testimony was that Asbury Howard, Irving Dichter, Chase Powers, Al Pezzati, Al Skinner, Maurice Travis, etc., were very good trade union leaders and conscientious in their work. See, for example, the testimony of Frank Bruske from Local 82;^(Tr. 1245-49) Glen Buckner from Local 392;^(Tr. 3386-87) and Joseph Dipenza from Local 485.^(Tr. 4558-65) The convention proceedings are replete with praise by the officers of respondent of one another, and praise of the officers by various delegates. For example, resolutions committee chairman Alton Lawrence moved the following resolution which was adopted by the 1952 convention:

RESOLVED, we commend Brothers Jack Clark, Orville Larson, Charles Wilson and Maurice Travis for the leadership they have shown. We appreciate greatly their determination never to flinch from the job to which we have elected

¹ Concrete evidence of gains in wages, hours, and working conditions was given by Bernard Stern, respondent's research director, who, after sketching earlier years, testified in detail as to the results of bargaining with the employers beginning with the period of World War II (e.g., tr. 6609-6782). Stern, and also the assistant research director, Stuart, testified to the accomplishments of respondent in other areas as well. Further consideration is given to this later herein.

them. We are anxious to show our respect for these brothers and others, namely, Graham Dolan and Al Skinner, in this time of assault from the anti-democratic, anti-union McCarran Committee. As Mine-Mill members, we want to go on working side-by-side with this leadership. Together we have proved what unionism can mean in the betterment of the lives of workers, union without regard to color or creed. (M. M. Ex. 125, p. 44.)

99. (a) The importance of the fact that the Communist officers of respondent have gained the confidence and support of the majority of the Union membership was given added significance by the extent to which this confidence goes, as evidenced by the findings now to be made.¹

(b) The witness Buckner testified that it is none of his business if the leadership of Mine-Mill was Communist, and he never had any feeling one way or the other about Communists in positions of leadership in the Union. Demonstrating the extent to which Buckner is willing to follow the leadership, Buckner was on the legislative committee, chaired by Irving Dichter, at the 1948 convention, and went along with a recommendation favored by Dichter although he, Buckner, did not personally favor the recommendation. (TR 8353-60)

(c) The witness Verne Curtis, Board Member for District 2 at the time he testified, stated flatly that he has no objection to a Communist Party member holding office in labor unions. (TR 8412-13)

(d) The witness Melvin Green was a delegate to the 1958 and 1959 conventions. He voted for resolutions opposing the McCarran Immigration Act, the Internal Security Act, and the Butler-Brownell Registration Act. He could not recall at the time of testifying what these were about but said he could not see how they helped the working men - he took the word of Ray Dennis that they were laws that would not help labor. He testified that if Ray Dennis or Jesse Van Camp told him a law was bad for labor, he would take their word for it. (TR 9281-95)

(e) The witness Stanley Wenham first joined Local 593 in the year 1942 as a charter member, was the first president of the local, has held the office a number of times since, and has attended many conventions

¹ The fact that the Communist officers have won the support was established from the testimony of the rank and file members (since they were apparently intended as a representative cross-section), from the convention proceedings, and from the continuance in office that they have achieved by a combination of appointments and elections.

(TR 5806-07)
and District 6 conferences. He has worked with Asbury Howard, Al Pezzati and Irving Dichter. He never asked them if they were Communist Party members, and it does not matter to him whether any officers of Mine-Mill are Communists. (TR 5840-43)

(f) The witness Severino Merino of Local 890 attended as a delegate the Mine-Mill conventions in 1957 and 1959. He testified that he did not pay much attention to what was going on and could not make heads or tails out of what was happening. He testified that he does not know the Communist position on things and it would not make any difference to him if he did know it. (TR 5845)

(g) The witness John Piano, Local 85, was aware that Mine-Mill has been called a Communist Union and that certain of its officers have been called Communist Party members. He testified that he was gratified his local has remained with Mine-Mill because he believes Mine-Mill is in the best position to deal with zinc problems. (TR 5847-51)

100. The facts of record require the conclusion that with relatively few exceptions the Communist officers and staff members of respondent have concealed the fact of their membership in the Communist Party from the other members of the Union. Most of respondent's witnesses testified that various of the specific officers, such as Dichter, Powers, Skinner, Howard, and Lawrence, never told them (the witnesses) that they (the officers) were members of the Party. In only a few instances had any of respondent's witnesses asked any of these officials if they were Party members. Where they had, the officers told the witnesses they were not members - Jesse Gaines as to Asbury Howard, Vincent Giaccone as to Van Camp, William Thomas as to Alton Lawrence, Asbury Howard and Charles Wilson. In the face of the many and consistent charges within the Union that the International officers were Party members, there is no evidence where those so identified as members in this proceeding met the charges by denying Party membership. Instead, they discoursed on "red-baiting" (see infra). An exception was Maurice Travis who announced his resignation from the Party, and thus admitted his membership, but this was only in order to sign a non-Communist affidavit. None of the officers identified on this record as Party members appeared to deny or rebut the evidence against them.

D. Issue of Communism Within the Union Itself

101. The record reflects, as the findings about to be made will show, that throughout the years from at least 1938 until the time of the hearing there have been serious conflicts within the Union itself over charges of

Communist orientation of the International.¹ The mere existence of dissension and factionalism caused by charges of Communist infiltration and domination of the International would not, of course, be determinative of the truth of the charges or of the issues in this proceeding. It is necessary, therefore, to consider the various events and occurrences in some detail to determine from the activities of those involved whether the facts add up to evidencing efforts to obtain or maintain control of the International by Communists for Communist purposes, or whether the situation has been one where for personal ambitions or some other reason, reckless and unjustified accusations have been made against the International.

During the Robinson Presidency

102. In 1938 and continuing until 1946 Reid Robinson was International President of Mine-Mill. During his regime there existed on the International Executive Board and elsewhere in the Union pro-Robinson factions and anti-Robinson factions. Anti-Communism was part, at least, of the platform or creed of the anti-Robinson faction. Significant developments during Robinson's regime will now be summarized.

(a) In late 1938, petitioner's witness Rasmussen was selected by a left-wing group in Mine-Mill to be a delegate to the first convention of the C. L. O. While at the convention, he had occasion to discuss with Reid Robinson and James Leary, President of a Mine-Mill local in Butte, Montana, the complaint (contention) of Leary that there was considerable Communist activity taking place in Butte which was disrupting the local union. Robinson's action with respect to this was to arrange for himself, Rasmussen, and Leary to meet the following day with Roy Hudson, a national officer of the Communist Party in charge of the Communist Party work in trade unions throughout the entire country. When they met together, Hudson stated that the Communist Party had a definite interest in Mine-Mill and he would use his influence to straighten out any Party activities that might be disrupting the Mine-Mill local in Butte. It is significant not only that Mine-Mill International President Robinson had such an apparently close contact with the Communist Party officer in charge of labor union activities but also that Robinson took this Mine-Mill problem to him.

¹ Evidence as to events and occurrences as far back as the late 1930's and early 1940's was presented and provides illuminating background for the situation within the Union during subsequent years and at the time of the hearing.

(b) In early 1939, Rasmussen was made an International representative in Mine-Mill; later in the year he was elected a member of the International Executive Board as the member for District 2 and took office in February of 1940.⁽⁷⁻¹⁰⁾ Immediately following the first board meeting which he attended, he was called into President Robinson's office and "quite strongly" advised by Robinson to line up with the "progressive forces" on the Executive Board in opposition to what Robinson called the "reactionaries." (Tr. 160.) In a later conversation it developed that Robinson included as "reactionaries" those who were complaining about sending into Mine-Mill districts as organizers individuals suspected of being out and out Communists. (Tr. 161.)

(c) Prior to the Union convention in September of 1941, the Union policy was to employ only members of the Union as International representatives and for the President to announce the appointments at Board meetings for Board approval. For several months this had not been done. There were a number of International representatives put on the payrolls who were not members of the Union at all, and they were put on between Board meetings by means of the President sending a letter to the Board Members outlining the qualifications in very glowing terms and asking for a vote by mail. Those whom Rasmussen could recall as having been hired in this manner were Alan McNeil, Howard Lee, William Gately, Don Harris, Jack Flaherty, George Knott, and Howard Goddard. It has been found, supra, that each of these was a member of the Communist Party. Approval of these individuals was by bare majority of the Executive Board and without knowing who the appointees were.¹

(d) An effort was made by President Robinson to have the convention that was held in September of 1941 change the Union Constitution to permit the appointment of organizers from outside the Union but this was defeated. (TR 217-218)

(e) At the 1942 convention, Mine-Mill absorbed by merger the National Association of Die Casters although many Mine-Mill officials, comprising the anti-Robinson group, were opposed to the merger.^(14-15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25) The N.A.D.C. became the Casting Division of Mine-Mill; Eddie Cheyfitz, the N.A.D.C. Executive Secretary, became Mine-Mill Board Member for the Casting Division; and various N.A.D.C. International representatives got

¹ It is to be noted that Howard Lee remained a staff member of the International until December 31, 1949; William Gately until March 31, 1960; Don Harris until July 15, 1948; Jack Flaherty until March 20, 1950; George Knott until April 15, 1949; and Howard Goddard until May 31, 1953. (Tr. 161, 162)

(TR 224-226)

the same assignment in Mine-Mill.¹ Those so identified on the record were Alex Balint, Pete Zvara, James Pinta, Herman Clott, Kenneth Eckert, Al Skinner, and Irving Dichter.^(TR 225-226) Eckert, Skinner, and Dichter have been found supra to have been members of the Communist Party. Eckert, Skinner, and Dichter became top officials in the International and Skinner and Dichter remained such at the time of the hearing (supra).

(f) During 1942 a serious conflict and dispute developed involving two factions on the International staff in Connecticut; one group was anti-Robinson and charged the other, a pro-Robinson group, with being Communists; the pro-Robinson group in turn charged the anti-Robinson faction with being union busters.^(DANIELSON, JR. 580-65, RASMUSSEN, TR 240-255) Following investigations of this, in January of 1943, there was a meeting of the International Executive Board held in Pittsburgh, Pennsylvania, together with representatives of the C. I. O.^(RASMUSSEN, TR 255-259) The pro-Robinson faction on the International Executive Board at this time consisted of Reid Robinson, Chase Powers of District 7, Homer Wilson of District 5, and Robert Carlin of then District 8.^(TR 252) The anti-Robinson faction on the Board were James Leary, Secretary-Treasurer, Ora Wilson, Vice President, Rasmussen for District 2, Angelo Verdu for District 3, Thomas Murray for District 1, Gobel Cravens for District 4, and Elmer Clark for the then Casting Division.^(TR 257) Also in attendance at the Pittsburgh meeting were a number of the pro-Robinson International representatives including Al Skinner, Jack Flaherty, Irving Dichter, and Lowell Hollenbeck.^(TR 258)

(g) At this Pittsburgh meeting, Mine-Mill President Robinson belittled the proposition that there was anything wrong with the Union; he took the position that there were merely some disgruntled people who were political opportunists and were causing the trouble.^(RASMUSSEN, TR 259) C. I. O. President Murray expressed himself differently, agreeing with Rasmussen that the Communist Party seemed determined to dominate Mine-Mill and to take it over and control it, and that this was the cause of the difficulties and most of the dissension in the Union.^(TR 260-262) Murray remarked that "If you have a cancer on your hand you had better cut it out before it destroys your entire body." (Tr. 262.) Murray offered the services of the C. I. O. to help with the problem.^(TR 261-262) Robinson was against this.

1 In late 1942, Robinson sent Rasmussen to Connecticut to investigate the difficulties and attempt to straighten them out. Rasmussen found that part of the conflict was brought about by a series of schools or classes on how to detect and deal with Communism in the Union taught by a Father Donelly, which was strongly opposed and criticized by the pro-Robinson faction and the subject of a great deal of interest by the anti-Robinson faction. Rasmussen found and reported to Robinson that Communism was the main issue in the controversy in Connecticut and the situation would never be cleared up unless something was done about that issue. Robinson's reaction was merely that he was sorry Rasmussen (and Ora Wilson who agreed with Rasmussen) had decided to oppose him in his efforts to build the Union. (TR 236-255)

(h) Having a majority on the Executive Board, the anti-Robinson faction was successful: in getting a resolution adopted declaring a state of emergency in District 6 and asking the C. I. O. to appoint an administrator; in declaring the recent election of the Executive Board Member for that District null and void; and, in going ahead with a program to discharge certain of the personnel of the pro-Robinson faction.^(Tr. 263-264) Robinson declared the actions taken were reprehensible and would go down as a black page in the history of the Union.^(Tr. 265) Actually discharged were Jack Flaherty, Lowell Hollenbeck, Henry Horowitz, John Lackner, Ruth Lloyd, and Jesse Van Camp.^{1 (Tr. 265)}

(i) Petitioner's witness Davidson was assigned by the C. I. O. as administrator for Mine-Mill District 6, which the President of the C. I. O. called a "Commie mess." (Tr. 618.) Mine-Mill representatives Horowitz, Quill, Skinner, and Lloyd refused to assist Davidson in getting the records from the Mine-Mill office in Waterbury, Connecticut; Davidson finally got into the office with the aid of a locksmith and found a bundle of Daily Workers in one corner of the room.^(Tr. 619-71) Davidson succeeded in turning the District into a functioning organization and then recommended to the Mine-Mill International Executive Board the election of a Board member for the District; the Board approved; an election was held and John Mankowski was elected. ^{Tr. 620-621}

(j) In April of 1943, International Vice President Ora Wilson, who was on the anti-Robinson faction, died.^(Tr. 621) A meeting of the International Executive Board was held in Cleveland, Ohio, the following May.^(Tr. 622) Robinson named Rasmussen as Vice President and this was approved by the Board.^(Tr. 623) Robinson then named Orville Larson to take Rasmussen's place as Board member for District 2 but this was defeated by a vote of about 7 to 4.^(Tr. 624) After much discussion and maneuvering, Dan Edwards, who was recommended by Rasmussen, was approved for District 2.^(Tr. 625) The pro-Robinson faction subsequently referred to Rasmussen's appointment as "the Cleveland Calamity." (Tr. 273.)

(k) As the result of elections in 1944, and a resignation in 1945, the composition of the International Executive Board changed from a majority in the anti-Robinson faction to a majority in the pro-Robinson faction at the beginning of the year 1946. ^(Tr. 274-277)

(m) During 1946, and before the convention was held that year, a dispute arose on the International Executive Board over the question whether Communists should be allowed to hold office in the Union.^(Tr. 278-279) Board Member Mankowski voiced the firm opinion "that no Communist should hold

¹ The pro-Robinson group subsequently referred to this as "the Pittsburgh Purge."

office in this International Union." (M. M. Ex. 73, p. 9.) Board Member Powers accused Mankowski of wanting to use Hitler tactics, and voiced opposition to any resolution barring Communists from holding office in the Union. ^(ID, p. 10) President Robinson also opposed such a resolution. ^(ID) He spoke favorably of the good work done by Communists in labor unions for the rank and file workers; he placed the issue on an International basis and asked how he could wholeheartedly support a world workers' movement if his own organization at the same time was saying that Communists could not hold office. ^(ID, p. 11) In effect, Robinson said that if they were to have a democratic organization it was necessary to let Communists hold office if elected.

(n) The Mine-Mill convention in 1946 was held in Cleveland, Ohio, on September 16 to 21. ^(MME-5) Communism in the Union was a substantial issue at the convention (see below). In the order of their occurrences at the convention, the following were among the things that took place:

(1) Paul Robeson was introduced as a speaker and spoke glowingly of the Soviet Union and the Communists in France, Czechoslovakia, Yugoslavia, Poland, Denmark, and China and elsewhere (M. M. Ex. 5, p. 70).

(2) The policy and program proposed by the Executive Board was presented which included: a policy that race, creed, color, sex or political belief should not be reason to restrict or affect any member's status; a policy to "welcome assistance and support from every organization devoted to serving the welfare of the working class of people"; and, a policy that membership in any other organization should not affect the rights and privileges in Mine-Mill of the members of other organizations (ib., p. 131, emphasis in text). These matters were the subject of considerable animosity at the time of their adoption by the Executive Board (see "(m)", above).

(3) The anti-Robinson group made an effort to change the Union constitution so as to bar Communist Party members from holding office, and there was considerable debate. ^(RASMUSSEN, pp. 313, 315, p. 316, p. 317, p. 318, p. 319, p. 320, p. 321, p. 322, p. 323, p. 324, p. 325, p. 326, p. 327, p. 328, p. 329, p. 330, p. 331, p. 332, p. 333, p. 334, p. 335, p. 336, p. 337, p. 338, p. 339, p. 340, p. 341, p. 342, p. 343, p. 344, p. 345, p. 346, p. 347, p. 348, p. 349, p. 350, p. 351, p. 352, p. 353, p. 354, p. 355, p. 356, p. 357, p. 358, p. 359, p. 360, p. 361, p. 362, p. 363, p. 364, p. 365, p. 366, p. 367, p. 368, p. 369, p. 370, p. 371, p. 372, p. 373, p. 374, p. 375, p. 376, p. 377, p. 378, p. 379, p. 380, p. 381, p. 382, p. 383, p. 384, p. 385, p. 386, p. 387, p. 388, p. 389, p. 390, p. 391, p. 392, p. 393, p. 394, p. 395, p. 396, p. 397, p. 398, p. 399, p. 400, p. 401, p. 402, p. 403, p. 404, p. 405, p. 406, p. 407, p. 408, p. 409, p. 410, p. 411, p. 412, p. 413, p. 414, p. 415, p. 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M. Ex. 5, p. 373.) Some delegates admitted that they were Communists. Finally, Driscoll summed up in favor of barring

Communists from Union office, and President Robinson summed up in opposition to such a provision (M. M. Ex. 5, pp. 397-407). As he did at the earlier meeting of the Executive Board (supra) Robinson stated that the labor organizations that had Communists as their leaders had done the most good in getting wage increases and other benefits for the workers; ^(p. 397) he said that a provision barring Communists from office would serve as a blackball; and, he made a personal attack upon Driscoll (who offered the resolution to bar Communists from office). By a close vote the resolution was lost. ^(KASPER, JR. TR 316-317) The remarks made by President Robinson must be said to evidence an affinity on his part for having Communists in Mine-Mill.

(o) The nominations at the 1946 convention, and the subsequent elections, resulted in an International Executive Board composed of only three members in the anti-Robinson faction (Moyer, Secretary; Verdu, District 3; and Mankowski, District 6) and nine in the pro-Robinson faction (Robinson, President; Maurice Travis, Vice President; Mason, District 1; Larson, District 2; Jesse Van Camp, District 4; H. Wilson, District 5; Powers, District 7; Carlin, District 8; and Eckert, Casting Division). ^(KASPER, JR. TR 316-317; M. M. Ex. pp. 244-51) In addition, pursuant to action taken at the convention that resulted in creating the office of Eastern Vice President, Homer Wilson was appointed Eastern Vice President and Charles Wilson to take Homer Wilson's place as Board Member for District 5. This added another person to the pro-Robinson faction on the Board.

(p) Immediately after the installation of new officers in 1946 a secession movement started in Connecticut led by Driscoll, Mankowski, ^(H. WILSON, TR 785; STEIN, TR 781) and others. ^(KASPER, JR. TR 316-317) Petitioner's witness H. Wilson was assigned by President Robinson to be in charge of the International's efforts to stop the secession movement and to conduct a campaign on behalf of Mine-Mill. ^(TR 786) Maurice Travis was in charge of obtaining organizers to help with the campaign. ^(TR 786) Among others that he sent to Connecticut, Travis hired back Horowitz, Flaherty, and Feldman, who had previously been objected to in Connecticut as Communist Party members and who had been fired in the "Pittsburgh Purge." ^(TR 787 SUPRA) Irving Dichter and Albert Pezzati were also working in Connecticut at the time. ^(TR 787) Homer Wilson testified as follows concerning those sent to Connecticut to work as Mine-Mill organizers in connection with the secession movement: ^(TR 792)

A . . . I didn't approve of the way we were going about the organizational attempt to stop the secession.

For instance, the whole idea back of the secession movement that they made public was their desire to get out from under the Communist dominated organization, the Communist organizers.

It seemed that all of these organizers that Travis could borrow throughout the international union, every one he borrowed was a good party man or somebody who had been branded as a party member at least, and that just added oil to the fire in Connecticut from the rank and file, and gave the secession more ammunition . . . , and I tried to get Travis to just bring in plain old rank and file workers to do the job.

* * *

Q Did Travis make any comments on your proposal?

A He sure did. He said these guys get in there and they had forgotten more about the class struggle than me or any of them rank and file guys would ever know. And that he was going to have competent people in there. (Tr. 792.)

(q) Wilson subsequently had another conversation with Travis about the organizers who had been selected to work in the campaign. ^(Tr. 794) Travis told Wilson that the Communist Party had organized Mine-Mill in the first place and that Wilson could either go along with the Party or get out. (Tr. 794)

(r) As a result of the secession movement in Connecticut a number of locals left Mine-Mill and the membership in Connecticut dropped from around 20,000 to around 10,000. ^(H. L. JASON, Tr. 798) The Connecticut secession movement spread to the midwest in District 3 under Board Member Verdu, and that secession also involved charges of Communism. (STEEN, Tr. 692)

(s) While the secession movements were going on Reid Robinson resigned as President and Maurice Travis was designated by the Executive Board to take over the position. (MIM Ex. 19, pp. 26, 31, 35)

**The Period from Robinson's Resignation Until
Expulsion from the C.I.O. in February 1950**

103. Mine-Mill asked the C.I.O. to intervene to stop the secession movement and the opposition also asked the C.I.O. to step into the picture; a C.I.O. committee was set up to investigate the situation. (C.I.O. 100-100-100-100)

104. The C.I.O. committee, in May of 1947, issued a report. The report stated that the alleged reasons for the withdrawal of practically one-fourth of the dues paying membership of Mine-Mill were stated by their representatives to have been the conduct and results of the recent International election, and domination and interference by interests outside the International. (C.I.O. 100-100-100-100) The report further stated that the officers of the International claimed the withdrawals were due to the activities of certain individuals who were self-seeking disruptionists. (C.I.O. 100-100-100-100) The report found, among other things, that Maurice Travis was continuously dealing with representatives of the Communist Party in shaping the policy of the International; also, that field men who had been discharged from other C.I.O. Unions for attempting to organize workers in the Communist Party were hired by Mine-Mill. The report recommended that Mine-Mill either have Maurice Travis resign or that he be removed, and that an administrator be appointed by President Murray of the C.I.O. to conduct the affairs of Mine-Mill for at least six months. (C.I.O. 100-100-100-100)

105. The Mine-Mill Executive Board rejected the proposals of the C.I.O. investigating committee and arranged for a special election of International officers. Nominations were made at the 1947 convention and the subsequent referendum vote resulted in the election of John Clark, President; Reid Robinson, Eastern Vice President; Wesley Madill, Western Vice President; Maurice Travis, Secretary-Treasurer; William Mason, District 1; Orville Larson, District 2; Jesse Van Camp, District 3; Leonard Douglas, District 4; Charles Wilson, District 5; Albert Pezzati, District 6; Chase Powers, District 7; Robert Carlin, District 8; and, Kenneth Eckert, Casting Division. (C.I.O. 100-100-100-100)

106. The 1947 convention adopted a policy of noncompliance with the provision of the Taft-Hartley Act, which provision required the officers of labor unions to file affidavits that they were not members of the Communist Party. This resulted in agitation among some of the locals for a change in policy and for compliance. (C.I.O. 100-100-100-100)

¹ There was considerable evidence submitted on the issue of the Taft-Hartley Act, the name commonly used for the Labor Management Relations Act of 1947, which provided in section 9(h) that in order for a union to invoke the machinery of the National Labor Relations Board each union officer must have submitted a non-Communist affidavit. It was stipulated by counsel and the record otherwise shows that labor in general, including the C.I.O., was opposed to the Taft-Hartley Act and the filing requirements. (E.g., tr.8064.)

107. The Die Casting Council adopted a resolution urging the International to reconsider its action and to comply with the non-Communist affidavit provision of the Taft-Hartley Act. ^(STERN, TR 6931-32, M.M. Ex. 121, p. 115) This was discussed at a meeting of the International Board held in April of 1948. ^(M.M. Ex. 121, p. 115) Vice President Madill was in favor of compliance. ^(IB, p. 4) Board Member Eckert defended his action as the one who had proposed the resolution for compliance to the Die Casting Division. ^(IB, p. 3, 5) Dennis, Dichter, Pezzati, and Skinner supported noncompliance and condemned Eckert. ^(IB, p. 5) Positions pro and con were read from various local unions. ^(IB, p. 5) A motion was made by Travis, seconded by Mason, Van Camp, Larson, Powers, and Pezzati that the Executive Board reaffirm opposition to filing the non-Communist affidavits. ^(IB, p. 6) The motion was carried with Eckert and Madill dissenting. ^(IB, p. 7)

108. In the summer of 1948, petitioner's witness Kirby attended a conference in Denver held at the request of various local unions to ask the International Board to comply with the Taft-Hartley affidavit provision; Madill, Eckert, and Wilson led the fight for compliance; Van Camp, Pezzati, Dichter, Travis and others fought against compliance; the result was decision not to comply. ^(TR 2913-14)

109. Following the action of the Executive Board in adhering to a policy of noncompliance with the Taft-Hartley affidavit requirements, Eckert led a secession movement among the locals in the Die Casting Division and several of the locals withdrew from Mine-Mill. ^(STERN, TR 6933-6936) Also, Madill led a secession movement among the locals in the State of Utah and certain of the locals there withdrew from Mine-Mill. ^(STERN, TR 6934-36)

110. At a Board meeting on September 10, 1948, Reid Robinson nominated Irving Dichter to be Board Member for the Casting Division to take the place of Eckert, and Dichter was elected by acclamation. ^(M.M. Ex. 121, p. 115) At a meeting on September 22, 1948, Reid Robinson nominated Orville Larson to take the place of Madill as Western Vice President and this was carried by acclamation. ^(IB, p. 12) Thus all opposition was eliminated on the Executive Board.

111. At the 1948 convention, September 13-17, a resolution was presented to work for repeal of the Taft-Hartley Act, to refuse to submit to any part of the Act, and calling the non-Communist affidavit requirement of the Act "a brazen discriminatory and unwarranted interference with our right to choose our own leadership and to determine our own policies." ^(M. M. Ex. 121, p. 115.) A minority report of the resolutions committee proposed that the question of Taft-Hartley compliance be placed before the entire membership for determination by referendum vote. ^(IB) President Clark, Secretary-Treasurer Travis, and Resolution Committee Chairman Pezzati, among others, insisted that the merits of Taft-Hartley were the subject of

discussion and refused to discuss, although requested by the minority, the question whether compliance should be voted upon by the entire membership in a referendum ^(16, 116-117) vote. The minority effort to submit the question of Taft-Hartley compliance was defeated and the resolution was adopted not to comply with Taft-Hartley. ^(13, 151-152)

112. At the 1948 convention, on motion of Albert Pezzati, a resolution was adopted condemning both C. I. O. Secretary-Treasurer James B. Carey and an article he had written entitled "We've Got the Reds on the Run." (M. M. Ex. 121, p. 165.) This convention also, on motion of Pezzati, adopted a resolution stripping Eckert and Madill of every right and privilege in Mine-Mill. ⁽¹⁵⁾ On motion of Irving Dichter, the convention adopted a resolution calling for putting an end to the United States House of Representatives Committee on Un-American Activities. ^(17, 223) The convention also adopted a resolution critical of the Truman Doctrine, the Marshall Plan, and "American imperialism." (P. 224.)

113. Between the 1948 and 1949 conventions, the International Executive Board changed its policy and, at a meeting on July 20, 1949, voted to comply with the non-Communist affidavit provision of the Taft-Hartley Act. ^(18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 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991, 992, 993, 994, 995, 996, 997, 998, 999, 1000) A Statement of the Executive Board on the Taft-Hartley affidavits was presented by President Clark and approved on motion of Vice President Reid Robinson. ^(11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 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987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000) Included in the Statement was:

In signing the affidavits we want to make it very clear that we are not succumbing to the hysteria of red-baiting that has become so popular among some labor leaders. We condemn the present anti-Communist crusade as a violent attack on democracy. We renew now our pledge to carry out the Mine-Mill constitutional provision for equality of membership, regardless of race, creed, national origin or political faith. (M. M. Ex. 90, p. 4.)

114. Following this action of the Executive Board, there was published in the Union newspaper a statement of Maurice Travis that he had resigned his membership in the Communist Party in order to sign the non-Communist affidavit required under the Taft-Hartley Act (A. G. Ex. 47, supra). While in Chicago for the 1949 Mine-Mill convention, petitioner's witness Kirby had a conversation with Travis during which Travis told Kirby that if Kirby would "quit giving us the opposition and get on our side" he would be made an Executive Board member of the district. (Tr. 2932.) Kirby refused and asked Travis how it was possible for Travis to sign the

non-Communist affidavit and at the same time come out with a statement that he had done so with reluctance and indignation in order to remain an officer in the Union. ^(Tr. 2933-34) Travis replied:

. . . we have been counseled and counsel tells us that the affidavit doesn't say we have not been a member or we might become a member of the Communist Party, but it says we are not now a member of the Communist Party, . . . When I sign it, I say I am not now a member of the Communist Party. I have resigned my Party membership, which I made a statement to the union about.
(Tr. 2934.)

115. In March of 1954, petitioner's witness Gardner, then a member of the Communist Party, discussed the signing of the Taft-Hartley affidavits with Albert Pezzati; Pezzati told Gardner he felt the Communist Party was wrong in the beginning in refusing to allow union leaders to sign the affidavits, and that the Party decision to let the Party members in the Union sign came late after the Party-led unions had been seriously weakened. ^(Tr. 4921-4922)

116. A resolution was presented at the 1949 convention to confirm the action of the Executive Board on the change in policy on Taft-Hartley compliance. ^(K.C.R. 7-23-54, MM 4, 122, p. 174) Petitioner's witness Kirby, a delegate to the convention, opposed the resolution on the grounds the rank and file membership should decide the matter of compliance or noncompliance. ^(Tr. 3734) He complained that the Executive Board acted "unilaterally and arbitrarily" in signing the affidavits after the previous convention had voted not to comply, and that the arbitrary signing was just another example of policy emanating from the top rather than "from the grass roots or the working man" who should establish policy. ^(MM 4, 122, p. 174) (Tr. 2930.) However, the action of the Executive Board was approved. ^(MM 4, 122, p. 174)

117. There were a number of other occurrences at the 1949 convention which were related in some way or another to Communism. A resolution, on motion of Powers, was adopted calling, among other things, for abolishing the House Committee on Un-American Activities and for repeal of the Smith Act of 1940. ^(MM 4, 122, p. 125) A resolution was defeated which would have changed the words "class struggle" in the Union Constitution to "economic struggle." ⁽²⁻²¹⁾ A resolution was passed which, among other things, called upon the United States to encourage trade with Eastern Europe, Russia and China. ^(2-21, 213, 215) During the debates on this resolution, Irving Dichter spoke in high

1 Dirdak explained the purpose as being to eliminate one of the things which caused people to identify Mine-Mill with the Communist Party. ^(MM 4, 122, p. 210)

praise of the Soviet Union and concluded with the statement that on one side of the world stand the Eastern European democracies, the Chinese people, and the Soviet Union - fighting to have a free life, a decent life, a life without oppression; on the other side (said Dichter) stand the employers, the monopolists, and the fascists.^(pp. 214-215) Robinson also spoke quite favorably of the Soviet Union, saying that they have democracy, freedom of expression, and the right to strike although because there is no "capitalistic boss with whom they have to negotiate . . . it becomes unnecessary for them to strike." (M. M. Ex. 122, p. 215.)

118. Continuing with the occurrences at the 1949 convention - Alton Lawrence commented on the question: "Can our union afford the luxury of tolerating Communists in its ranks or among its officials?" (M. M. Ex. 122, pp. 179-180.) His answer was that Mine-Mill cannot curtail the democratic rights of freedom of political belief. ⁽¹⁰⁾

119. Finally with respect to significant occurrences at the 1949 convention, a substantial issue arose over the relationship between Mine-Mill and the C. I. O. (M. M. Ex. 122, pp. 129-152). President Clark, Pezzati, Robinson, Dichter, and others spoke strongly in favor of Mine-Mill asserting autonomy or "the right of self-government" and refusing to abide by a C. I. O. requirement that all affiliated International Unions enforce and carry out the C. I. O. constitution and instructions of C. I. O. conventions (id., p. 255). A minority report was submitted by Dirdak aimed at practicing real democracy by abiding by the majority vote of C. I. O. since Mine-Mill was a member (id., pp. 130-132). In urging adoption of the "autonomy" policy, Irving Dichter stated that there was a move on to oust Mine-Mill from the C. I. O. and that Mine-Mill should remain united behind the Mine-Mill leadership in support of the principles Mine-Mill stood for (id., p. 147).¹

120. Petitioner's witness Everingham was chosen as one of the Mine-Mill delegates to the C. I. O. convention held a few months after the 1949 Mine-Mill convention.^(p. 214-215) President Clark and Orville Larson reported at a meeting of the Mine-Mill delegates that C. I. O. President Murray had stated that the Mine-Mill delegates would be seated at the C. I. O. convention but Mine-Mill would have to get rid of Maurice Travis and Reid Robinson as the first step in cleaning up the Union. ^(TR 2690)

¹ In this general connection, the record shows that in 1946 the C. I. O. passed a resolution rejecting and resenting attempts by outside organizations to control the affairs of any labor union.

121. At the C. I. O. convention in 1949, the C. I. O. Constitution was amended so as to bar members of the Communist Party from holding positions of leadership in any affiliate union. ^(S. 1116, T. 42, 1, 1116, 42, p. 1-2) The constitutional amendments adopted by the C. I. O. convention were:

(A) PAGE 10: Article IV concerning Officers and Executive Board is amended by the insertion of a new Section 4 which reads as follows:
"Section 4. No individual shall be eligible to serve either as an officer or as a member of the Executive Board who is a member of the Communist Party, any fascist organization, or other totalitarian movement, or who consistently pursues policies and activities directed toward the achievement of the program or the purposes of the Communist Party, any fascist organization, or other totalitarian movement, rather than the objectives and policies set forth in the constitution of the CIO."

* * *

PAGE 15: 1. A new Section 8 reads as follows:
"Section 8. The Executive Board shall have the further power to refuse to seat or to remove from office any member of the Executive Board, or to remove from office any officer, who is found by the Board, by a two-thirds vote after notice and hearing, to be ineligible to serve under the provisions of Article IV, Section 4. Any action of the Executive Board under this section may be appealed to the Convention, provided, however, that such action shall be effective when taken and shall remain in full force and effect pending the appeal."

* * *

PAGE 16: 2. A new Section 10, which reads as follows: "Section 10. The Executive Board shall have the further power, upon a two-thirds vote, to revoke the Certificate of Affiliation of or to expel or to take any other appropriate action against any national or international union or organizing

committee the policies and activities of which are consistently directed toward the achievement of the program or the purposes of the Communist Party, any fascist organization, or other totalitarian movement, rather than the objectives and policies set forth in the constitution of the CIO. Any action of the Executive Board under this section may be appealed to the Convention, provided, however, that such action shall be effective when taken and shall remain in full force and effect pending the appeal." (M. M. Ex. 92.)

122. In November of 1949, charges were filed under the above amendments with the National C. I. O. Executive Board against Mine-Mill President Clark, who was a member of the C. I. O. Executive Board, and charges were also filed against the Mine-Mill International Union.¹ The charges stated that the policies and activities of Mine-Mill were consistently directed toward the achievement of a program of the purposes of the Communist Party rather than the objectives and purposes set forth in the Constitution of the C. I. O. Hearings were held in January of 1950 before a C. I. O. committee during which Mine-Mill presented rebuttal witnesses and a written statement.² The conclusion of the C. I. O. committee was:²

For the reasons stated, therefore, and on the basis of all the evidence presented to it, the committee unanimously concludes that the policies and activities of Mine, Mill are consistently directed toward the achievement of the program and the purposes of the Communist Party rather than the objectives and policies set forth in the CIO constitution. The committee recommends that the executive board exercise the powers granted to it by article VI, section 10, of the CIO constitution and, by virtue of those powers, revoke the certificate of affiliation heretofore granted to the Mine, Mill and Smelter Workers and expel it from the CIO. (A. G. Ex. 116, p. 22.)

123. Mine-Mill was in fact expelled from the C. I. O. on February 20, 1950 (Resp. Answer; Stern, tr. 3152, 8240).

¹ Charges were also filed against certain other affiliated unions. (A. G. Ex. 116)

² The report of the C. I. O. committee was received in evidence, without objection, along with the transcript of the C. I. O. hearings, as proof that these things happened but not as proof of the truth of anything contained in the documents. They have been so considered.

(SEE TR 8144, 8156-8157)

The Period from Expulsion from the
C. I. O. to the Time of the Hearing

124. As will appear, Communism remained an issue in Mine-Mill after the Union had been expelled from the C. I. O., and the efforts of the anti-Communists were consistently defeated.

125. Petitioner's witness Dirdak who had carried on an anti-Communist battle at the 1949 Mine-Mill convention was placed on trial by his local on charges of conduct unbecoming a Union officer, taking part in the publication of a newspaper critical of the International, and treason. ^(TR 2301-2305) Mine-Mill International representative Howard Goddard, found supra to have been a member of the Communist Party, served as prosecutor. ^(TR 2304) The charge of treasonable conduct was based upon the positions taken by Dirdak at the convention. ^(TR 2304) As a result of the charges and trial, Dirdak was expelled. ^(TR 2304) Thereafter, the trial of Dirdak became an issue in subsequent election contests with the result that in 1950 the West End branch of his local went with the Chemical Workers, A. F. L., and, in 1951, the Trona branch went with the United Mine Workers. ^(TR 2306-2310)

126. Petitioner's witness Everingham was present at a meeting in early 1950, of a Coordinating Council of Mine-Mill Locals 14 and 18 at which a motion was introduced asking for the resignation of Maurice Travis and Reid Robinson for the good of the Union, so that it would not be expelled from the C. I. O. ^(TR 2643-44) Maurice Travis was present at the meeting. ^(TR 2644) After the meeting, Everingham and Rudy Hanson and Travis rode home together in an automobile. ^(TR 2645) Everingham commented to Travis that the men were very much concerned about the charges of Communism among the officers of the Union and that this was doing the Union damage. ^(TR 2645) Travis replied, referring to the possible expulsion from the C. I. O., that there was nothing in the minds of the men that a few pennies gained for them in negotiations would not cure and make them forget. ^(TR 2646) Around the middle of the year 1950, Everingham resigned his position as an officer of his local in order to be able to be more outspoken against those whom he believed to be Communists within the Union. ^(TR 2700-2711) He was subsequently elected as a delegate to the annual convention held in September of 1950. ^(TR 2701)

127. At the 1950 convention, a resolution was offered on "Peace" which criticized the foreign policy of the United States, particularly the Marshall Plan, the construction and storing of atomic bombs, and United States participation in the Korean War. ^(TR 2702) Everingham spoke at the convention in opposition to the resolution and said that the policy put forward in the resolution was exactly as that put forward by the Daily Worker. ^(TR 2703) At the

(TR 2703; AG. Ex. 36 pp. 102-103)

next meeting of his local attended by Everingham after the convention a man by the name of Halvorson introduced a motion castigating Everingham for his action at the convention. ^(M. M. Ex. 124, p. 151.) This motion was defeated but about nine months later Everingham was charged with and tried by his local for conduct unbecoming a Union member. ^(M. M. Ex. 124, p. 151.) At the trial, Halvorson was accused by Everingham of being a member of the Communist Party and first denied it but upon being told by Everingham that Everingham knew his Party book number, Halvorson admitted that he had once belonged to the Communist Party. Everingham was expelled from the local union and from the International. ^(M. M. Ex. 124, p. 151.)

128. At the 1950 convention, a speaker was introduced who said, among other things, that fear of Communists evidenced unsound minds, that loyalty investigations were witch hunts, and that the war budget enacted by Congress was a fear budget. ^(M. M. Ex. 124, p. 151.) President Clark commented that every word uttered had been along the lines of the thinking of Mine-Mill. ^(p. 32)

129. A resolution was introduced at the 1950 convention reciting that no International officer should belong to the Communist Party and proposing that Maurice Travis resign as Secretary-Treasurer. ^(M. M. Ex. 124, p. 151.) Nonconcurrence was moved by Pezzati and the resolution was defeated. ^(M. M. Ex. 124, p. 151.) Various resolutions were offered to bar members, ex-members, or sympathizers of the Communist Party from holding any office or job in the International Union or any local union. ^(M. M. Ex. 124, p. 151.) Powers moved nonconcurrence and the resolutions were defeated. ^(p. 32)

130. At the 1951 convention, delegate John Blackwell made a report on his recent visit to the Soviet Union and other countries as a member of an American trade union delegation. ^(M. M. Ex. 124, p. 151.) Most of his report was devoted to praising the Soviet Union in glowing terms. ^(M. M. Ex. 124, p. 151.) The 1951 convention passed a resolution for repeal of the Smith Act and a resolution which included:

We should work closely with such organizations as the National Association for Advancement of Colored People, the Mexican-American National Association, the National Negro Labor Council, and the Civil Right Congress, toward an end to brutality and terror, defense of frameup victims, and toward full first-class citizenship for all, regardless of color, national origin, sex or political belief. ¹ (M. M. Ex. 124, p. 151.)

¹ In this connection, see the findings supra on instructions given Gardner to work closely with the Negro Labor Council and the Civil Rights Congress when he was hired as an International representative of Mine-Mill.

131. Petitioner's witness McLean ran for the office of International Secretary-Treasurer of Mine-Mill in 1951 and 1953 against Maurice Travis. (TR 3163) McLean campaigned on an anti-Communist platform on a slate in opposition to the policies on International political issues that had been followed by the incumbent International officers. (TR 3167-3168) He was handicapped in his campaign by the failure of the International to publish the results of the election of officers of the locals, and by the absence of a directory of the locals. (TR 3164-67)

132. The Montana locals proposed resolutions at the 1952 convention: to resume the publication in detail of the votes of individual locals on candidates and issues; (M.M. Ex. 125, p. 59-63) and, that the International reestablish the practice of providing a list of the local unions. (pp. 160-161) Alton Lawrence spoke in opposition to publishing the election results, maintaining that to do so would aid the "enemies" of the Union, particularly in raiding. (M. M. Ex. 125, p. 60.) Chase Powers moved that the matter of publishing a list of the locals be referred to the International Board. (p. 161) This was passed and the resolution for publishing election returns was defeated. (pp. 161-63)

133. From McLean's testimony it seems that not only were new candidates for International offices handicapped by the absence of this information, but the incumbent officers running for reelection had an advantage since the information was available to them and this tended to perpetuate the incumbents in office. (TR 3163-67)

134. Among other resolutions passed at the 1952 convention were: a master resolution condemning the McCarran Committee, the McCarran Act, the Smith Act, the Federal Bureau of Investigation, and the Government of Spain; (M.M. Ex. 125, p. 73-74) a resolution for a cease fire in Korea; (pp. 131-132) and, a resolution commending Clark, Orville Larson, Charles Wilson, Maurice Travis, Graham Dolan, and Al Skinner. (p. 44)

135. Resolutions opposing the foreign policies of the United States and opposing the domestic policies of the Government in the field of Communism or subversion, such as those set forth above and also set forth in the findings on earlier conventions, have been consistent occurrences at the Mine-Mill conventions. Similarly, the reports and declarations of certain of the International officers have consistently, at the various conventions, been quite critical of the Government of the United States, especially the foreign policies and the domestic programs in the field of Communism. These matters and their relevancy to the ultimate issues in this proceeding are considered in the following section headed "Policies and Programs of Respondent."

136. Around June of 1953, petitioner's witness Gardner, a Mine-Mill International representative and member of the Communist Party, was transferred by Mine-Mill from Buffalo, New York, to the Coeur d'Alene District in Idaho. (TR 4892) Gardner stopped enroute in Denver where the International headquarters were located. (TR 4893) While in Denver he met with Mine-Mill Comptroller Harold Sanderson, identified in the record as a member of the Communist Party. (TR 4894) The conversation was as follows: (TR 4894-95)

Sanderson told me the union was having a great deal of difficulty in the Coeur d'Alene mining district because of a former international representative against whom charges had been filed with the Idaho State Committee of the Communist Party that should result in his expulsion from the party; that this international representative was leading a factional movement, both within the party and within the union. And he cautioned me that I should be very careful in my work there to remain completely aloof from this factionalism, and that also it would necessitate my remaining completely outside the party organization (sic) there because the factional group under the leadership of this former international representative headed the party faction as well, and that at a time when the air began to clear and when they in the Rocky Mountain region of the Communist Party felt that the time was ripe for me to re-establish my contact with the party, I would be contacted there; that he or somebody else from the international office would contact me prior to that, so that I would know the person contacting me was from the party.

(Tr. 4894-4895.)

Sanderson also told Gardner that the name of the International representative was Rudy Hansen, and Sanderson suggested that Gardner see Maurice Travis, the Mine-Mill International Secretary-Treasurer. (TR 4895)

137. Gardner went from the meeting with Sanderson to Travis' home. (TR 4895) Travis also told Gardner about the factional situation existing in the Coeur d'Alene district, and stated that key Communist Party people in the area were involved in it including Peter Pikarski, a Mine-Mill International representative. (TR 4896) Travis, too, cautioned Gardner to remain completely aloof from the factionalism within Mine-Mill and within the Party in Coeur d'Alene. (TR 4896)

138. A few months after arriving in Coeur d'Alene, Gardner met, in August or September of 1953, on at least two occasions with the International Board Member for District 7, Chase Powers. Powers told Gardner that Rudy Hansen and the other International representative in the district and one of the active Communist Party people there were working against Powers in the area. Powers also told Gardner that charges had been filed in the Party against Hansen, and Powers asked Gardner to help isolate Hansen from the miners in the area so it would be easier to expel Hansen from the Union. Gardner replied that he certainly would be guided by the position of the International officers who were interested in the expulsion of Hansen from the Communist Party. (TR 4849)

139. In late 1953 or early 1954, Gardner attended a meeting in Spokane, Washington, of local Mine-Mill leadership in the Idaho and western-Washington area. While there, Gardner had a conversation with the International Publicity Director, Graham Dolan. Dolan told Gardner that he had filed charges against Rudy Hansen with the State Committee of the Communist Party of Idaho at the instigation of Mine-Mill International officers Sanderson and Travis, also, that one of the charges was that Hansen had taken unilateral action in resigning from Mine-Mill without first consulting the Communist Party organization that operated within the Union, and that another charge was collaboration by Hansen with William Mason, suspected of being a "traitor to the Mine-Mill and Smelter Workers Union." (Tr. 4902.)

140. At the 1953 convention, the Montana locals again submitted, like they had at the 1952 convention, resolutions aimed at resuming the practice of publishing election returns in the Union paper, and of resuming the practice of publishing a roster of locals. These were subsequently defeated and a substitute resolution adopted under which detailed election returns of the International officers would be sent to the financial secretary of each local and to each candidate for International office, following each International referendum. (161-165)

141. The Butte Miners Union submitted a resolution at the 1953 convention as follows:

RESOLVED, that the official Organ of the International Union shall reflect social, economic and political thinking of the membership of our Union and avoid partisan positions on international and political questions. (M. M. Ex. 126, pp. 136 & 137.)

Board Member Mason, who said he had drafted the resolution, spoke in favor of it. He said that by "international political questions" was meant questions

that have to do with the cold war, and questions having to do with the assessment of responsibility for peace in the world. (M. M. Ex. 126, p. 137.) He said that "we have yet to see even the faintest criticism of the position of the Soviet Union in our International paper." (Ib.) Mason continued with the thought that responsibility for peace "lies in the Kremlin as well as in Washington, D. C." but that the Union paper always pointed to the faults of the United States and never criticized the Soviet Union. (P. 138.) He concluded with "let us not try to outdo the Daily Worker with our International Organ." (P. 138.)

Board Member Pezzati spoke against the resolution. ^(pp. 138-139) The opening part of his discussion was:

No question, of course, that the employers in this industry would like to have us put out a comic book instead of a newspaper. Especially they would like to have us put out a position to our membership which would in no way conflict with the dominant position taken by practically ninety-nine and nine-tenths of the newspapers of this country. They don't like to have their position challenged. They don't like to have our membership receive information other than that contained in the press dominated and controlled and owned by the big business interests of this country who are down the line against our interests, whether it relates to wages and conditions of work or whether it relates to peace and foreign affairs. The last speaker says that the world is divided on who is responsible for the present state of affairs in the world. Well, America is still part of the world and America is divided on the question, too, and I say that we have got to be partisan. We have got to take our side in this question, too, along with the rest of the American people. . . . (M. M. Ex. 126, pp. 138 & 139.)

Charles McLean spoke in favor of the resolution, stating, among other things, that: "I don't believe that the Union paper is reflecting the views on these International political questions that is the thinking of the majority, the vast majority of the membership of this Union." (P. 140.) Morris Wright, the editor of the paper, commented that at no time has the paper taken positions beyond the official positions adopted in the conventions or adopted by the Executive Board between conventions. (P. 141, emphasis added.) The resolution was defeated. ^(p. 141)

142. The 1953 convention passed resolutions condemning various aspects of the foreign policy of the United States, and opposing the domestic actions of the Government in the field of Communism. To illustrate, the report of International President Clark criticized embargo on goods to Russia, Eastern Europe and China, which was adopted by the convention. (p. 160) Eight printed pages of the Clark report were devoted to an attack on many of the policies and programs of the United States (pp. 235-242)

143. During the last week of December of 1953, the Butte Local No. 1 of Mine-Mill met and passed a resolution to secede from Mine-Mill and go with the C. I. O. steelworkers. (MORALEZ, TR 3467-3468) After this, there was a movement to fight the secession in which petitioner's witness Moralez participated. (TR 3469) The International office sent in outside organizers to help fight the secession, and some local people were also put on as temporary organizers. (TR 3469)

144. The Butte secession movement lasted until in March of 1954 when an election was held under the National Labor Relations Act. (MORALEZ, TR 3471, 3636) Mine-Mill won the election. (TR 3652) During the period of the campaign, Moralez attended at least two Communist Party meetings. (TR 3637-3638) One was a meeting held at the Royal Motel. (TR 3633) Present were Mike Ross, John Hellman (a Party official not in Mine-Mill), Albert Skinner, Cozy Dolan, and Moralez. (TR 3654, 3663) The purpose of the meeting was to figure out a way of keeping control of the Mine-Mill locals. (TR 3654) Another meeting was held at the Clark Hotel, attended by Louis Johnson, Al Skinner, John Hellman, and Moralez. (TR 3638) The secession movement or raid was discussed along with how to control the Union after the election. (TR 3639) One point was that it would be necessary to put Communist Party members on the Mine-Mill staff in the area; mention was made of bringing Fred Gardner in to watch over Salvas. (TR 3640)

145. The secession movement in Butte and Anaconda (Mine-Mill District 1) was led by the Board Member for the District, William Mason. (SALVAS, TR 9752) By action of the International Executive Board, Ernest Salvas, a witness for respondent in this proceeding, was appointed to replace Mason as Board Member for the District. (TR 9553-54) It has been found supra that the Communist Party believed Salvas to be pro-Communist or at least a person who would go along with the Party people in Mine-Mill. The International representatives sent in by the national officers during the National Labor Relations Board election campaign included: Al Skinner, Mike Ross, Maclovio Barraza and Ike Bayliff from District 2; Al Pezzati and Bob Schrank from District 6; Fred Gardner from District 7; and Graham Dolan and Sam Feldman to handle publicity. Harold Wildman, already an International

representative in District 1, also participated, and Arthur Morales was put on the staff on a temporary basis.^(TR 4408-4409, 4410, 4411) Of these, it has been found supra that Skinner, Ross, Barraza, Pezzati, Schrank, Gardner, Dolan, Feldman, Wildman and Morales were members of the Communist Party.

146. It has been found above that Morales, Skinner, Dolan and Ross met separately with Communist Party functionary John Hellman to discuss the campaign, and that on another occasion during the campaign Morales and Skinner met with Party functionaries Louis Johnson and John Hellman.

147. Petitioner's witness Gardner, having been sent to Butte to aid in the N.L.R.B. election campaign, was assigned to a permanent position as an International representative there around March of 1954.^(TR 4408-4409) Petitioner's witnesses Gardner and Morales, and respondent's witnesses Salvas and J. P. Mooney were in agreement that Mine-Mill was engaged in a strike in Butte which started in August and ended in October of 1954.^(TR 4408-4409, 4410, 4411) All agreed that Gardner was on the negotiating committee and all agreed as to the terms of a settlement agreement that was reported to the membership at a meeting in the Civic Auditorium in Butte, and that the membership voted to accept or ratify the settlement.^(TR 4408-4409, 4410, 4411, 4412, 4413, 4414, 4415, 4416, 4417, 4418, 4419, 4420, 4421, 4422, 4423, 4424, 4425, 4426, 4427, 4428, 4429, 4430, 4431, 4432, 4433, 4434, 4435, 4436, 4437, 4438, 4439, 4440, 4441, 4442, 4443, 4444, 4445, 4446, 4447, 4448, 4449, 4450, 4451, 4452, 4453, 4454, 4455, 4456, 4457, 4458, 4459, 4460, 4461, 4462, 4463, 4464, 4465, 4466, 4467, 4468, 4469, 4470, 4471, 4472, 4473, 4474, 4475, 4476, 4477, 4478, 4479, 4480, 4481, 4482, 4483, 4484, 4485, 4486, 4487, 4488, 4489, 4490, 4491, 4492, 4493, 4494, 4495, 4496, 4497, 4498, 4499, 4500, 4501, 4502, 4503, 4504, 4505, 4506, 4507, 4508, 4509, 4510, 4511, 4512, 4513, 4514, 4515, 4516, 4517, 4518, 4519, 4520, 4521, 4522, 4523, 4524, 4525, 4526, 4527, 4528, 4529, 4530, 4531, 4532, 4533, 4534, 4535, 4536, 4537, 4538, 4539, 4540, 4541, 4542, 4543, 4544, 4545, 4546, 4547, 4548, 4549, 4550, 4551, 4552, 4553, 4554, 4555, 4556, 4557, 4558, 4559, 4560, 4561, 4562, 4563, 4564, 4565, 4566, 4567, 4568, 4569, 4570, 4571, 4572, 4573, 4574, 4575, 4576, 4577, 4578, 4579, 4580, 4581, 4582, 4583, 4584, 4585, 4586, 4587, 4588, 4589, 4590, 4591, 4592, 4593, 4594, 4595, 4596, 4597, 4598, 4599, 4600, 4601, 4602, 4603, 4604, 4605, 4606, 4607, 4608, 4609, 4610, 4611, 4612, 4613, 4614, 4615, 4616, 4617, 4618, 4619, 4620, 4621, 4622, 4623, 4624, 4625, 4626, 4627, 4628, 4629, 4630, 4631, 4632, 4633, 4634, 4635, 4636, 4637, 4638, 4639, 4640, 4641, 4642, 4643, 4644, 4645, 4646, 4647, 4648, 4649, 4650, 4651, 4652, 4653, 4654, 4655, 4656, 4657, 4658, 4659, 4660, 4661, 4662, 4663, 4664, 4665, 4666, 4667, 4668, 4669, 4670, 4671, 4672, 4673, 4674, 4675, 4676, 4677, 4678, 4679, 4680, 4681, 4682, 4683, 4684, 4685, 4686, 4687, 4688, 4689, 4690, 4691, 4692, 4693, 4694, 4695, 4696, 4697, 4698, 4699, 4700, 4701, 4702, 4703, 4704, 4705, 4706, 4707, 4708, 4709, 4710, 4711, 4712, 4713, 4714, 4715, 4716, 4717, 4718, 4719, 4720, 4721, 4722, 4723, 4724, 4725, 4726, 4727, 4728, 4729, 4730, 4731, 4732, 4733, 4734, 4735, 4736, 4737, 4738, 4739, 4740, 4741, 4742, 4743, 4744, 4745, 4746, 4747, 4748, 4749, 4750, 4751, 4752, 4753, 4754, 4755, 4756, 4757, 4758, 4759, 4760, 4761, 4762, 4763, 4764, 4765, 4766, 4767, 4768, 4769, 4770, 4771, 4772, 4773, 4774, 4775, 4776, 4777, 4778, 4779, 4780, 4781, 4782, 4783, 4784, 4785, 4786, 4787, 4788, 4789, 4790, 4791, 4792, 4793, 4794, 4795, 4796, 4797, 4798, 4799, 4800, 4801, 4802, 4803, 4804, 4805, 4806, 4807, 4808, 4809, 4810, 4811, 4812, 4813, 4814, 4815, 4816, 4817, 4818, 4819, 4820, 4821, 4822, 4823, 4824, 4825, 4826, 4827, 4828, 4829, 4830, 4831, 4832, 4833, 4834, 4835, 4836, 4837, 4838, 4839, 4840, 4841, 4842, 4843, 4844, 4845, 4846, 4847, 4848, 4849, 4850, 4851, 4852, 4853, 4854, 4855, 4856, 4857, 4858, 4859, 4860, 4861, 4862, 4863, 4864, 4865, 4866, 4867, 4868, 4869, 4870, 4871, 4872, 4873, 4874, 4875, 4876, 4877, 4878, 4879, 4880, 4881, 4882, 4883, 4884, 4885, 4886, 4887, 4888, 4889, 4890, 4891, 4892, 4893, 4894, 4895, 4896, 4897, 4898, 4899, 4900, 4901, 4902, 4903, 4904, 4905, 4906, 4907, 4908, 4909, 4910, 4911, 4912, 4913, 4914, 4915, 4916, 4917, 4918, 4919, 4920, 4921, 4922, 4923, 4924, 4925, 4926, 4927, 4928, 4929, 4930, 4931, 4932, 4933, 4934, 4935, 4936, 4937, 4938, 4939, 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4947, 4948, 4949, 4950, 4951, 4952, 4953, 4954, 4955, 4956, 4957, 4958, 4959, 4960, 4961, 4962, 4963, 4964, 4965, 4966, 4967, 4968, 4969, 4970, 4971, 4972, 4973, 4974, 4975, 4976, 4977, 4978, 4979, 4980, 4981, 4982, 4983, 4984, 4985, 4986, 4987, 4988, 4989, 4990, 4991, 4992, 4993, 4994, 4995, 4996, 4997, 4998, 4999, 5000)

^(TR 4408-4409) 1 There is conflict between the testimony of Gardner and the testimony of respondent's witness Salvas as to who was responsible for Gardner's assignment. Gardner testified that he had a conversation with Al Skinner, then Mine-Mill Director for District 2, at which Bob Schrank was also present, and that Skinner asked Gardner if he would be willing to come to Butte permanently.^(TR 4408-4409) Skinner also said to Gardner, according to Gardner's testimony, that Salvas was a weak person and someone had to ride herd on him to make sure that Communist Party policies were carried out in Mine-Mill in that area.^(TR 4408-4409) Salvas testified that he, himself, recommended Gardner's assignment to Butte,^(TR 4408-4409) and respondent's exhibit 63 (M. M. Ex. 63) indicates that the assignment was approved by the General Executive Board in April of 1954. Gardner was corroborated by petitioner's witness Morales, who testified that he attended a Communist Party meeting at which Al Skinner was present and at which there was specifically discussed the matter of bringing Gardner into Butte to watch over Salvas and to see that he did what was right so far as Communist Party policy was concerned.^(TR 4408-4409) Gardner's testimony in this proceeding was consistent with prior testimony he had given as a witness in an earlier criminal trial. (See tr. 1731, 1735-37 of M. M. Ex. 62, pp. 1971-72C.) Morales' testimony conforms with a contemporary report he had given to the Federal Bureau of Investigation. (See tr. 3638-56.) Neither Skinner nor Schrank nor others present at the meetings testified to by Gardner and Morales were called to deny the testimony. It is found that the meetings with Skinner and other Party members took place as Gardner and Morales related.

148. There were differences in the testimony on certain aspects of the meeting at the Civic Auditorium. The differences included whether Gardner expressed disagreement with the settlement, whether the meeting was calm or loud and hostile, and whether the settlement was considered a good or bad one. The merits of the settlement are not relevant to this proceeding and no useful purpose would be served in detailing the lengthy testimony of the four witnesses. To the extent that the testimony presented by respondent may have been designed to cast doubt upon the overall credibility of Gardner or Moralez, this was not done.¹ In fact, there were internal conflicts in the testimony given by each of respondent's own witnesses and conflicts between the two on some aspects of the Civic Auditorium meeting.

149. Both Gardner and Moralez testified to Communist Party meetings held shortly after the 1954 strike settlement, which both attended and at which Communist Party functionary John Hellman and Mine-Mill staff member Dolan were also present.^(TR 4915-11, 5115-3, 5183-40, 5244-50) The subject of these meetings was concern over whether there was dissatisfaction among the miners over the strike settlement which might cause their lack of confidence in and support of the Mine-Mill leadership. Communist Party functionary Hellman reprimanded Gardner for not holding meetings of the strikers so they could arrive at collective thinking.^(TR 5115-3) Dolan criticized Gardner for his voicing opposition to the settlement since Dolan felt to have done so was dangerous to the Communist Party.^(TR 5115-3) Dolan and Hellman upheld the settlement. Hellman said somebody blundered and he was going to get to the bottom of it since he had been around town talking to miners and found they were dissatisfied.^(TR 5115-3) Hellman and Dolan instructed Gardner to draft a report on his position during the strike, on the settlement, and regarding the future of Mine-Mill in the Butte area.^(TR 5115-6) Hellman told Gardner the report would be sent to the Rocky Mountain Region of the Communist Party and that Sanderson and Travis would be furnished a copy of it.^(TR 4915-16, 5136-39)

150. Moralez and Gardner both testified that Gardner prepared a report and presented it at the next meeting of the Communist Party group,

¹ Much of the testimony given by Salvas and Mooney had a bearing on subjects about which Gardner testified, with the overall and primary purpose of attacking the general credibility of Gardner when coupled with matters brought out during the cross-examination of Gardner himself. Salvas and Mooney both testified that Gardner's reputation for truth and veracity in Montana was bad, and that Gardner was causing dissension within Mine-Mill.^(TR 9425) On the other hand, in many areas of his testimony Gardner was strongly corroborated by Moralez. Needless to say, where findings are made on the basis of Gardner's testimony, such testimony has been credited.

(TR 5746-48; 5916-15)

which was held in December of 1954 at Dolan's home. Present at the meeting were Party functionaries Hellman, Dolan, Gardner and Moralez. (18) There was a discussion on how to get a copy of the report to Travis, Sanderson, and Communist Party officials, and Dolan was designated to see that it was done. (18)

151. In the early part of 1955, while Gardner, Moralez, J.P. Mooney, and Salvas were still on the Mine-Mill staff in Montana, an issue arose among the members of the Union in the area over Maurice Travis. (E.G. MOONEY, TR 4925) Travis had been indicted in the fall of 1954 in a Federal District Court on charges of filing a false non-Communist affidavit with the National Labor Relations Board, and thereafter the National Labor Relations Board issued a decertification order against the Union. (E.G. SALVAS, TR 4946-47) At a meeting of the Butte Local a motion was made to demand the immediate resignation of Travis from his leadership position in the International. (E.G. GARDNER, TR 4924)

152. A "leadership" meeting (i.e., a meeting of the officials of the local union and of the International staff officers in the area) was arranged to be held on February 6, 1955. (TR 4925-26; 4927-28) Petitioner's witness Gardner and respondent's witnesses Mooney and Salvas all testified that a meeting of the International staff members was held on February 5, 1955, to discuss the forthcoming leadership meeting and the Travis issue. (E.G. GARDNER, TR 4927-28) Gardner, Mooney and Salvas testified that Chase Powers, Al Skinner, Dougherty, Kalafatich, Gardner, Salvas, Mooney, and Dolan attended. (E.G. MOONEY, TR 4929-30; 4931-32)

153. What transpired at the staff meeting preceding the leadership meeting was the subject of diverse views. Gardner testified that Skinner felt that detailed organization was necessary so the staff could control the leadership (local officials), and he proposed a resolution be drafted supporting Travis and presented to the leaders of the locals. (TR 4927-28) Gardner also testified that Chase Powers accused him (Gardner) of giving leadership to the opposition to Travis, and that he (Gardner) expressed the view that the staff was wrong in scheduling the leadership meeting because it would only further divide the union. (E.G. MOONEY, TR 4929-30) Mooney and Salvas testified that the staff unanimously agreed to direct the leadership toward leaving the Travis issue for solution at the next Mine-Mill convention. (E.G. SALVAS, TR 4933-34) However, there were conflicts in the testimony of Mooney and of Salvas. Both Gardner and Mooney testified that the matter of Travis' reelection was discussed but Salvas did not recall that it was. (E.G. MOONEY, TR 4929-30; 4931-32)

1 Salvas was not certain that Dolan was there. (E.G. GARDNER, TR 4934) Gardner, in his testimony in a criminal trial given in advance of his testimony in this proceeding included Sonny Powers among those present and failed to name J.P. Mooney or Dolan.

(TR 9504)
testified that Gardner agreed with the staff, and at another point Mooney testified it was not Gardner's position that the Travis issue be postponed until the convention. (TR 9512)

154. Gardner, Mooney and Salvas agreed that the three of them met at a Green's Cafe after this staff meeting. (TR 4924, 9505, 9357) Mooney and Salvas testified that Kalafatich was also present. (TR 4925, 9357) According to Gardner they discussed the Travis issue and drafted a compromise resolution calling for Travis to announce he would not be a candidate for reelection to International office. (TR 4929-30) According to Mooney, Salvas asked him to draft a resolution embodying the agreement reached earlier at the staff meeting, which Mooney said was to get the local leadership to postpone the Travis matter until the convention. (TR 9306) Salvas testified that he did not recall any resolution. (TR 9357)

155. Gardner, Mooney and Salvas all agreed that a second staff meeting was held during the morning preceding the leadership meeting. (TR 4926, 4930, 9352) There was reasonably substantial agreement as to the names of others that were present. Otherwise, there were differences as to what took place. Gardner testified that he submitted a resolution to the staff for consideration. (TR 4929-31) Mooney testified that Salvas submitted it, (TR 4930) and Salvas testified that no resolution was submitted. (TR 9357-59) Gardner testified that after submitting the resolution, it and Gardner were attacked by Dolan who accused Gardner of playing an Eckert-type role and suggested that no consideration be given to the resolution. (TR 4931) Mooney testified that Salvas started to present the resolution and Dolan criticized it and Mooney. (TR 4932) Both Gardner and Mooney described the Dolan criticism as animated. (TR 4930, 4931) Salvas wasn't even sure that Dolan was present but testified that if he was he said nothing. (TR 4935) Gardner testified that a resolution in support of Travis was adopted. (TR 4934) Mooney testified that no agreement was reached at this second staff meeting, but that Salvas would make a report at the leadership meeting from notes. (TR 4938) Salvas testified that there was no resolution and he was merely to present the staff position. (TR 9360)

156. Gardner, Salvas and Mooney each recalled attending the leadership meeting in Butte on February 6, 1955, and that the staff position was presented by Salvas. (TR 4939, 9360, 4932) Gardner testified that the staff position was unqualified support of Travis. (TR 4939) Mooney and Salvas testified that the staff position was to postpone the Travis issue until convention time. (TR 4941, 9343) Gardner and Mooney agreed that the leadership rejected the staff position. (TR 4950, 4945) Salvas testified that he did not recall any rejection of the staff motion. (TR 7618) All three witnesses agreed that the position taken by the leadership was to call for the immediate resignation of Travis. (TR 4932, 9510, 9361)

157. Petitioner's witness Morales testified that he attended a meeting of the miners at which a resolution was offered seeking to place the Butte local in support of Travis but the resolution did not even get a second. (K 3771-72) This was also contained in a contemporaneous report that Morales had made to the Federal Bureau of Investigation (A. G. Ex. 76) and the report also showed that it was the position of the Communist Party that Travis be supported. In addition, after Mooney and Salvas had left the witness stand, there was received in evidence as respondent's exhibit M. M. Ex. 204, the resolution drafted at the meeting between Gardner, Mooney and Salvas for presentation at the leadership meeting. This exhibit rebuts Salvas' testimony that no resolution was prepared (supra). The exhibit also rebuts Mooney on the approach to be recommended as to Travis, and supports Gardner. The latter (Gardner) was also corroborated by the happenings at a Communist Party meeting held after the leadership meeting. (See finding 159 below.)

158. The facts relevant to this proceeding which are found from the testimony and exhibits discussed in the above findings, on the Travis issue will now be summarized. Maurice Travis became a serious issue among the Mine-Mill members in the Montana locals in late 1954 and early 1955, to the extent of agitation for his resignation, and a meeting of the leadership of the locals was scheduled to discuss the matter. Prior to the leadership meeting, the International staff officers in the area met to plan their approach at the leadership meeting. Most of these International staff officers were members of the Communist Party. With the exception of Gardner the International staff officers were for trying to get the locals to support Travis. A proposed resolution for the staff to present to the leadership was drafted at a meeting between Gardner, Mooney, and Salvas requesting that Travis announce he would not seek reelection as an officer of the International Union. The staff rejected this and Dolan was quite critical of such a proposition. The leadership of the Montana locals adopted a position calling for the immediate resignation of Travis.

159. Gardner and Morales testified without contradiction to a meeting of their Communist Party group on the evening following the leadership meeting, at which the leadership meeting was discussed. (K 4943-35, 4944-46, 5272-74) Party functionary Hellman and also Dolan were present in addition to Gardner and Morales. Dolan accused Gardner of having played an anti-Communist Party role at the leadership meeting in telling the leaders they should determine their own destiny. Gardner was criticized by Dolan and Hellman for not having more interest and more emphasis in his talk at the leadership meeting in favor of Travis. Gardner replied that he favored the resignation of Travis in the interest of unity. Dolan took the position that in not supporting Travis, Gardner was going completely against Mine-Mill and Communist Party policy.

160. In mid-February of 1955, there was a meeting of the International Executive Board at which Travis submitted his resignation and proposed that Pezzati be named to replace him, which was done - Dichter was named to take Pezzati's place as Board Member for District 6.¹ (GARDNER, TR 4930-37, MOONEY, TR 4513-16, SALVAS, TR 4869-71, 4924-25, 4934-41) Gardner was present at this Board meeting as were Salvas and Mooney. There is conflict on who was responsible for Gardner's attendance at the Board meeting but there is no necessity to attempt to resolve the conflict since no finding will be made on the point.¹

161. While Gardner was in Denver in February of 1955 (see above finding) he was notified, first by James Durkin and then by Al Skinner, of a closed Communist Party meeting, which he attended. Also present were Mine-Mill functionaries Sanderson, Durkin, Dougherty and Skinner. Dougherty had been present at the Montana leadership meeting and the Mine-Mill staff meeting that preceded it (*supra*). The Communist Party meeting was called for the purpose of having Gardner explain his position relative to the Butte strike settlement (see *supra*) and his activities in forcing the resignation of Travis. Gardner told the Party group that he thought the strike settlement was a sellout by the Communist Party, and that the role of Travis in the International Union was disruptive to the entire Union and they could not afford to go into the convention with such an issue before them. (TR 4937-41, SEE ALSO M.M. EX. 12, pp. 1751-55, 1874-81, 2047)

162. The Mine-Mill convention was held March 14 to 19, 1955, in Spokane, Washington (M.M., Ex. 127).² Not long thereafter, Irving Dichter, who had recently been appointed Board Member for District 6, arrived in Montana and went to see Gardner at Gardner's home. (SEE E.G. M.M. EX. 12, P. 316) Dichter told Gardner that he (Dichter) was there to investigate Gardner's activities and his continued failure to accept the leadership of the Union, particularly with reference to the previous strike settlement, and that also to be investigated was Gardner's continued activities with a group that was identified with the ouster of Travis. (TR 4941-42) Gardner told Dichter that Bob Schrank, an International representative of the Union, had already come to town and had spent many hours discussing those very subjects with Gardner. (TR 4942) Dichter replied that Schrank was assigned there by the International and would report back to

¹ The various conflicts between the testimony of Gardner, Mooney and Salvas have all been considered with particular attention, as noted *supra*, to the effect, if any, on the overall or general credibility of Gardner.

² There was no convention in 1954. Pertinent occurrences at the 1955 convention are considered *infra*.

them but Dichter was to report to the Rocky Mountain Region of the Communist Party and some kind of action would undoubtedly be taken on the report. ¹ (p. 4142)

163. A month or so after this meeting between Dichter and Gardner, Gardner was expelled from the Communist Party. ^{(p. 4143, 4144, 4145, 4146, 4147, 4148, 4149, 4150, 4151, 4152, 4153, 4154, 4155, 4156, 4157, 4158, 4159, 4160, 4161, 4162, 4163, 4164, 4165, 4166, 4167, 4168, 4169, 4170, 4171, 4172, 4173, 4174, 4175, 4176, 4177, 4178, 4179, 4180, 4181, 4182, 4183, 4184, 4185, 4186, 4187, 4188, 4189, 4190, 4191, 4192, 4193, 4194, 4195, 4196, 4197, 4198, 4199, 4200, 4201, 4202, 4203, 4204, 4205, 4206, 4207, 4208, 4209, 4210, 4211, 4212, 4213, 4214, 4215, 4216, 4217, 4218, 4219, 4220, 4221, 4222, 4223, 4224, 4225, 4226, 4227, 4228, 4229, 4230, 4231, 4232, 4233, 4234, 4235, 4236, 4237, 4238, 4239, 4240, 4241, 4242, 4243, 4244, 4245, 4246, 4247, 4248, 4249, 4250, 4251, 4252, 4253, 4254, 4255, 4256, 4257, 4258, 4259, 4260, 4261, 4262, 4263, 4264, 4265, 4266, 4267, 4268, 4269, 4270, 4271, 4272, 4273, 4274, 4275, 4276, 4277, 4278, 4279, 4280, 4281, 4282, 4283, 4284, 4285, 4286, 4287, 4288, 4289, 4290, 4291, 4292, 4293, 4294, 4295, 4296, 4297, 4298, 4299, 4300, 4301, 4302, 4303, 4304, 4305, 4306, 4307, 4308, 4309, 4310, 4311, 4312, 4313, 4314, 4315, 4316, 4317, 4318, 4319, 4320, 4321, 4322, 4323, 4324, 4325, 4326, 4327, 4328, 4329, 4330, 4331, 4332, 4333, 4334, 4335, 4336, 4337, 4338, 4339, 4340, 4341, 4342, 4343, 4344, 4345, 4346, 4347, 4348, 4349, 4350, 4351, 4352, 4353, 4354, 4355, 4356, 4357, 4358, 4359, 4360, 4361, 4362, 4363, 4364, 4365, 4366, 4367, 4368, 4369, 4370, 4371, 4372, 4373, 4374, 4375, 4376, 4377, 4378, 4379, 4380, 4381, 4382, 4383, 4384, 4385, 4386, 4387, 4388, 4389, 4390, 4391, 4392, 4393, 4394, 4395, 4396, 4397, 4398, 4399, 4400, 4401, 4402, 4403, 4404, 4405, 4406, 4407, 4408, 4409, 4410, 4411, 4412, 4413, 4414, 4415, 4416, 4417, 4418, 4419, 4420, 4421, 4422, 4423, 4424, 4425, 4426, 4427, 4428, 4429, 4430, 4431, 4432, 4433, 4434, 4435, 4436, 4437, 4438, 4439, 4440, 4441, 4442, 4443, 4444, 4445, 4446, 4447, 4448, 4449, 4450, 4451, 4452, 4453, 4454, 4455, 4456, 4457, 4458, 4459, 4460, 4461, 4462, 4463, 4464, 4465, 4466, 4467, 4468, 4469, 4470, 4471, 4472, 4473, 4474, 4475, 4476, 4477, 4478, 4479, 4480, 4481, 4482, 4483, 4484, 4485, 4486, 4487, 4488, 4489, 4490, 4491, 4492, 4493, 4494, 4495, 4496, 4497, 4498, 4499, 4500, 4501, 4502, 4503, 4504, 4505, 4506, 4507, 4508, 4509, 4510, 4511, 4512, 4513, 4514, 4515, 4516, 4517, 4518, 4519, 4520, 4521, 4522, 4523, 4524, 4525, 4526, 4527, 4528, 4529, 4530, 4531, 4532, 4533, 4534, 4535, 4536, 4537, 4538, 4539, 4540, 4541, 4542, 4543, 4544, 4545, 4546, 4547, 4548, 4549, 4550, 4551, 4552, 4553, 4554, 4555, 4556, 4557, 4558, 4559, 4560, 4561, 4562, 4563, 4564, 4565, 4566, 4567, 4568, 4569, 4570, 4571, 4572, 4573, 4574, 4575, 4576, 4577, 4578, 4579, 4580, 4581, 4582, 4583, 4584, 4585, 4586, 4587, 4588, 4589, 4590, 4591, 4592, 4593, 4594, 4595, 4596, 4597, 4598, 4599, 4600, 4601, 4602, 4603, 4604, 4605, 4606, 4607, 4608, 4609, 4610, 4611, 4612, 4613, 4614, 4615, 4616, 4617, 4618, 4619, 4620, 4621, 4622, 4623, 4624, 4625, 4626, 4627, 4628, 4629, 4630, 4631, 4632, 4633, 4634, 4635, 4636, 4637, 4638, 4639, 4640, 4641, 4642, 4643, 4644, 4645, 4646, 4647, 4648, 4649, 4650, 4651, 4652, 4653, 4654, 4655, 4656, 4657, 4658, 4659, 4660, 4661, 4662, 4663, 4664, 4665, 4666, 4667, 4668, 4669, 4670, 4671, 4672, 4673, 4674, 4675, 4676, 4677, 4678, 4679, 4680, 4681, 4682, 4683, 4684, 4685, 4686, 4687, 4688, 4689, 4690, 4691, 4692, 4693, 4694, 4695, 4696, 4697, 4698, 4699, 4700, 4701, 4702, 4703, 4704, 4705, 4706, 4707, 4708, 4709, 4710, 4711, 4712, 4713, 4714, 4715, 4716, 4717, 4718, 4719, 4720, 4721, 4722, 4723, 4724, 4725, 4726, 4727, 4728, 4729, 4730, 4731, 4732, 4733, 4734, 4735, 4736, 4737, 4738, 4739, 4740, 4741, 4742, 4743, 4744, 4745, 4746, 4747, 4748, 4749, 4750, 4751, 4752, 4753, 4754, 4755, 4756, 4757, 4758, 4759, 4760, 4761, 4762, 4763, 4764, 4765, 4766, 4767, 4768, 4769, 4770, 4771, 4772, 4773, 4774, 4775, 4776, 4777, 4778, 4779, 4780, 4781, 4782, 4783, 4784, 4785, 4786, 4787, 4788, 4789, 4790, 4791, 4792, 4793, 4794, 4795, 4796, 4797, 4798, 4799, 4800, 4801, 4802, 4803, 4804, 4805, 4806, 4807, 4808, 4809, 4810, 4811, 4812, 4813, 4814, 4815, 4816, 4817, 4818, 4819, 4820, 4821, 4822, 4823, 4824, 4825, 4826, 4827, 4828, 4829, 4830, 4831, 4832, 4833, 4834, 4835, 4836, 4837, 4838, 4839, 4840, 4841, 4842, 4843, 4844, 4845, 4846, 4847, 4848, 4849, 4850, 4851, 4852, 4853, 4854, 4855, 4856, 4857, 4858, 4859, 4860, 4861, 4862, 4863, 4864, 4865, 4866, 4867, 4868, 4869, 4870, 4871, 4872, 4873, 4874, 4875, 4876, 4877, 4878, 4879, 4880, 4881, 4882, 4883, 4884, 4885, 4886, 4887, 4888, 4889, 4890, 4891, 4892, 4893, 4894, 4895, 4896, 4897, 4898, 4899, 4900, 4901, 4902, 4903, 4904, 4905, 4906, 4907, 4908, 4909, 4910, 4911, 4912, 4913, 4914, 4915, 4916, 4917, 4918, 4919, 4920, 4921, 4922, 4923, 4924, 4925, 4926, 4927, 4928, 4929, 4930, 4931, 4932, 4933, 4934, 4935, 4936, 4937, 4938, 4939, 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4947, 4948, 4949, 4950, 4951, 4952, 4953, 4954, 4955, 4956, 4957, 4958, 4959, 4960, 4961, 4962, 4963, 4964, 4965, 4966, 4967, 4968, 4969, 4970, 4971, 4972, 4973, 4974, 4975, 4976, 4977, 4978, 4979, 4980, 4981, 4982, 4983, 4984, 4985, 4986, 4987, 4988, 4989, 4990, 4991, 4992, 4993, 4994, 4995, 4996, 4997, 4998, 4999, 5000} At a Communist Party meeting held by Morales, Dolan, and Hellman, Morales was instructed to cut off completely all contact with Gardner, and Dolan stated that Gardner would have to be removed from the Mine-Mill payroll.

164. Gardner, Morales, Mooney and Salvas agreed that Gardner was fired from Mine-Mill around June of 1955. Gardner testified that Pezzati came to town and told him it was necessary to fire him since the Union needed to retrench, and in the retrenchment they had to let Gardner go, also that the Union would move him anywhere he wanted to go if he would leave Butte. Salvas testified to the effect that he (Salvas) found it necessary to have Gardner removed because Gardner was causing dissension in Mine-Mill in Montana, a lot of people in the area did not trust Gardner, and that Gardner was hurting Salvas and Mine-Mill. Salvas testified that he called Mine-Mill President Clark on the telephone and discussed the matter, that subsequently Clark and Pezzati arrived in Butte and met with Gardner and Salvas, and Clark advised Gardner he was being fired. ^{(p. 4195, 4196, 4197, 4198, 4199, 4200, 4201, 4202, 4203, 4204, 4205, 4206, 4207, 4208, 4209, 4210, 4211, 4212, 4213, 4214, 4215, 4216, 4217, 4218, 4219, 4220, 4221, 4222, 4223, 4224, 4225, 4226, 4227, 4228, 4229, 4230, 4231, 4232, 4233, 4234, 4235, 4236, 4237, 4238, 4239, 4240, 4241, 4242, 4243, 4244, 4245, 4246, 4247, 4248, 4249, 4250, 4251, 4252, 4253, 4254, 4255, 4256, 4257, 4258, 4259, 4260, 4261, 4262, 4263, 4264, 4265, 4266, 4267, 4268, 4269, 4270, 4271, 4272, 4273, 4274, 4275, 4276, 4277, 4278, 4279, 4280, 4281, 4282, 4283, 4284, 4285, 4286, 4287, 4288, 4289, 4290, 4291, 4292, 4293, 4294, 4295, 4296, 4297, 4298, 4299, 4300, 4301, 4302, 4303, 4304, 4305, 4306, 4307, 4308, 4309, 4310, 4311, 4312, 4313, 4314, 4315, 4316, 4317, 4318, 4319, 4320, 4321, 4322, 4323, 4324, 4325, 4326, 4327, 4328, 4329, 4330, 4331, 4332, 4333, 4334, 4335, 4336, 4337, 4338, 4339, 4340, 4341, 4342, 4343, 4344, 4345, 4346, 4347, 4348, 4349, 4350, 4351, 4352, 4353, 4354, 4355, 4356, 4357, 4358, 4359, 4360, 4361, 4362, 4363, 4364, 4365, 4366, 4367, 4368, 4369, 4370, 4371, 4372, 4373, 4374, 4375, 4376, 4377, 4378, 4379, 4380, 4381, 4382, 4383, 4384, 4385, 4386, 4387, 4388, 4389, 4390, 4391, 4392, 4393, 4394, 4395, 4396, 4397, 4398, 4399, 4400, 4401, 4402, 4403, 4404, 4405, 4406, 4407, 4408, 4409, 4410, 4411, 4412, 4413, 4414, 4415, 4416, 4417, 4418, 4419, 4420, 4421, 4422, 4423, 4424, 4425, 4426, 4427, 4428, 4429, 4430, 4431, 4432, 4433, 4434, 4435, 4436, 4437, 4438, 4439, 4440, 4441, 4442, 4443, 4444, 4445, 4446, 4447, 4448, 4449, 4450, 4451, 4452, 4453, 4454, 4455, 4456, 4457, 4458, 4459, 4460, 4461, 4462, 4463, 4464, 4465, 4466, 4467, 4468, 4469, 4470, 4471, 4472, 4473, 4474, 4475, 4476, 4477, 4478, 4479, 4480, 4481, 4482, 4483, 4484, 4485, 4486, 4487, 4488, 4489, 4490, 4491, 4492, 4493, 4494, 4495, 4496, 4497, 4498, 4499, 4500, 4501, 4502, 4503, 4504, 4505, 4506, 4507, 4508, 4509, 4510, 4511, 4512, 4513, 4514, 4515, 4516, 4517, 4518, 4519, 4520, 4521, 4522, 4523, 4524, 4525, 4526, 4527, 4528, 4529, 4530, 4531, 4532, 4533, 4534, 4535, 4536, 4537, 4538, 4539, 4540, 4541, 4542, 4543, 4544, 4545, 4546, 4547, 4548, 4549, 4550, 4551, 4552, 4553, 4554, 4555, 4556, 4557, 4558, 4559, 4560, 4561, 4562, 4563, 4564, 4565, 4566, 4567, 4568, 4569, 4570, 4571, 4572, 4573, 4574, 4575, 4576, 4577, 4578, 4579, 4580, 4581, 4582, 4583, 4584, 4585, 4586, 4587, 4588, 4589, 4590, 4591, 4592, 4593, 4594, 4595, 4596, 4597, 4598, 4599, 4600, 4601, 4602, 4603, 4604, 4605, 4606, 4607, 4608, 4609, 4610, 4611, 4612, 4613, 4614, 4615, 4616, 4617, 4618, 4619, 4620, 4621, 4622, 4623, 4624, 4625, 4626, 4627, 4628, 4629, 4630, 4631, 4632, 4633, 4634, 4635, 4636, 4637, 4638, 4639, 4640, 4641, 4642, 4643, 4644, 4645, 4646, 4647, 4648, 4649, 4650, 4651, 4652, 4653, 4654, 4655, 4656, 4657, 4658, 4659, 4660, 4661, 4662, 4663, 4664, 4665, 4666, 4667, 4668, 4669, 4670, 4671, 4672, 4673, 4674, 4675, 4676, 4677, 4678, 4679, 4680, 4681, 4682, 4683, 4684, 4685, 4686, 4687, 4688, 4689, 4690, 4691, 4692, 4693, 4694, 4695, 4696, 4697, 4698, 4699, 4700, 4701, 4702, 4703, 4704, 4705, 4706, 4707, 4708, 4709, 4710, 4711, 4712, 4713, 4714, 4715, 4716, 4717, 4718, 4719, 4720, 4721, 4722, 4723, 4724, 4725, 4726, 4727, 4728, 4729, 4730, 4731, 4732, 4733, 4734, 4735, 4736, 4737, 4738, 4739, 4740, 4741, 4742, 4743, 4744, 4745, 4746, 4747, 4748, 4749, 4750, 4751, 4752, 4753, 4754, 4755, 4756, 4757, 4758, 4759, 4760, 4761, 4762, 4763, 4764, 4765, 4766, 4767, 4768, 4769, 4770, 4771, 4772, 4773, 4774, 4775, 4776, 4777, 4778, 4779, 4780, 4781, 4782, 4783, 4784, 4785, 4786, 4787, 4788, 4789, 4790, 4791, 4792, 4793, 4794, 4795, 4796, 4797, 4798, 4799, 4800, 4801, 4802, 4803, 4804, 4805, 4806, 4807, 4808, 4809, 4810, 4811, 4812, 4813, 4814, 4815, 4816, 4817, 4818, 4819, 4820, 4821, 4822, 4823, 4824, 4825, 4826, 4827, 4828, 4829, 4830, 4831, 4832, 4833, 4834, 4835, 4836, 4837, 4838, 4839, 4840, 4841, 4842, 4843, 4844, 4845, 4846, 4847, 4848, 4849, 4850, 4851, 4852, 4853, 4854, 4855, 4856, 4857, 4858, 4859, 4860, 4861, 4862, 4863, 4864, 4865, 4866, 4867, 4868, 4869, 4870, 4871, 4872, 4873, 4874, 4875, 4876, 4877, 4878, 4879, 4880, 4881, 4882, 4883, 4884, 4885, 4886, 4887, 4888, 4889, 4890, 4891, 4892, 4893, 4894, 4895, 4896, 4897, 4898, 4899, 4900, 4901, 4902, 4903, 4904, 4905, 4906, 4907, 4908, 4909, 4910, 4911, 4912, 4913, 4914, 4915, 4916, 4917, 4918, 4919, 4920, 4921, 4922, 4923, 4924, 4925, 4926, 4927, 4928, 4929, 4930, 4931, 4932, 4933, 4934, 4935, 4936, 4937, 4938, 4939, 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4947, 4948, 4949, 4950, 4951, 4952, 4953, 4954, 4955, 4956, 4957, 4958, 4959, 4960, 4961, 4962, 4963, 4964, 4965, 4966, 4967, 4968, 4969, 4970, 4971, 4972, 4973, 4974, 4975, 4976, 4977, 4978, 4979, 4980, 4981, 4982, 4983, 4984, 4985, 4986, 4987, 4988, 4989, 4990, 4991, 4992, 4993, 4994, 4995, 4996, 4997, 4998, 4999, 5000}

165. While the record is conflicting on exactly who fired Gardner and why, the undisputed facts are that he was fired and that prior thereto the necessity of having him fired was the subject of a Communist Party meeting between Mine-Mill people, Dolan and Morales, who were also members of the Party, and Communist Party functionary John Hellman who was not in Mine-Mill.

166. At the 1955 Mine-Mill convention, a resolution was offered reciting that foreign ideologies have no place in our form of government, and proposing that no person be permitted to be on the ballot for any job in Mine-Mill who has belonged or belongs to any subversive organization. ^(p. 4195) The resolution was defeated.

167. Also at the 1955 convention, Union spokesmen were critical of the United States foreign policies and domestic activities in the anti-Communist field. By way of example, the Call to the Convention, which was prepared

¹ The testimony of Mooney and Salvas to the effect that Dichter told them he had come to Montana at the request of the International officers to lay down the law to Gardner has been considered. ^{(p. 4195, 4196, 4197, 4198, 4199, 4200, 4201, 4202, 4203, 4204, 4205, 4206, 4207, 4208, 4209, 4210, 4211, 4212, 4213, 4214, 4215, 4216, 4217, 4218, 4219, 4220, 4221, 4222, 4223, 4224, 4225, 4226, 4227, 4228, 4229, 4230, 4231, 4232, 4233, 4234, 4235, 4236, 4237, 4238, 4239, 4240, 4241, 4242, 4243, 4244, 4245, 4246, 4247, 4248, 4249, 4250, 4251, 4252, 4253, 4254, 4255, 4256, 4257, 4258, 4259, 4260, 4261, 4262, 4263, 4264, 4265, 4266, 4267, 4268, 4269, 4270, 4271, 4272, 4273, 4274, 4275, 4276, 4277, 4278, 4279, 4280, 4281, 4282, 4283, 4284, 4285, 4286, 4287, 4288, 4289, 4290, 4291, 4292, 4293, 4294, 4295, 4296, 4297, 4298, 4299, 4300, 4301, 4302, 4303, 4304, 4305, 4306, 4307, 4308, 4309, 4310, 4311, 4312, 4313, 4314, 4315, 4316, 4317, 4318, 4319, 4320, 4321, 4322, 4323, 4324, 4325, 4326, 4327, 4328, 4329, 4330, 4331, 4332, 4333, 4334, 4335, 4336, 4337, 4338, 4339, 4340, 4341, 4342, 4343, 4344, 4345, 4346, 4347, 4348, 4349, 4350, 4351, 4352, 4353, 4354, 4355, 4356, 4357, 4358, 4359, 4360, 4361, 4362, 4363, 4364, 4365, 4366, 4367, 4368, 4369, 4370, 4371, 4372, 4373, 4374, 4375, 4376, 4377, 4378, 4379, 4380, 4381, 4382, 4383, 4384, 4385, 4386, 4387, 4388, 4389, 4390, 4391, 4392, 4393, 4394, 4395, 4396, 4397, 4398, 4399, 4400, 4401, 4402, 4403, 4404, 4405, 4406, 4407, 4408, 4409, 4410, 4411, 4412, 4413, 4414, 4415, 4416, 4417, 4418, 4419, 4420, 4421, 4422, 4423, 4424, 4425, 4426, 4427, 4428, 4429, 4430, 4431, 4432, 4433, 4434, 4435, 4436, 4437, 4438, 4439, 4440, 4441, 4442, 4443, 4444, 4445, 4446, 4447, 4448, 4449, 4450, 4451, 4452, 4453, 4454, 4455, 4456, 4457, 4458, 4459, 4460}

by Maurice Travis, attacked what was called "the frantic pursuit of 'subversives' in this country, and the Government's "threat of 50 years of cold war." (M. M. Ex. 127, p. 6.) Union spokesmen continued to refer to the indictment of persons under the Smith Act as a "frameup." (M. M. Ex. 127, pp. 86 & 254.) Criticism of and resolutions against the Department of Justice, the Senate Internal Security Committee, the House Committee on Un-American Activities were made and adopted. (See, e. g., M. M. Ex. 127, pp. 87, 162, 256-260.)

168. The pattern of attacks upon the Government of the United States continued at the 1956 convention. To illustrate, a resolution was passed, upon motion of Irving Dichter, which, among other things, urged greater effort to stop "witch-hunting by Congressional committees," to repeal the Smith Act, and to "Free the victims now in jail, under indictment, or appealing convictions under the thought control legislation now on the statute books." (M. M. Ex. 128, p. 75.)

169. Petitioner's witness Fikes was a member of the Communist Party from 1948 to 1959. ^(TR 5014-5120) In late 1957, it became necessary for Fikes to leave Alabama where he then lived and he went to Los Angeles, California. ^(TR 5069, 5074) The Communist Party people in Alabama told Fikes to contact the International representative for Mine-Mill in the Los Angeles area and he could get him a job. ^(TR 5074-75) Fikes arrived in California in October of 1957 and contacted Mine-Mill International representative Harlow Wildman. ^(TR 5073) Fikes told Wildman that Wildman could verify who Fikes was through Asbury Howard or Charles Wilson or other Mine-Mill people in Alabama. ^(TR 5074-75) Wildman replied that if this is right "we will get you a job." (Tr. 5075.) Wildman had Fikes fill out an application with the American Brass Company and Fikes subsequently got a job with that company. ^(TR 5075-76)

170. In January 1958 or February 1958, Fikes met in Los Angeles with Asbury Howard who had come to California from Alabama. ^(TR 5079) They discussed the whereabouts and activities of various mutual acquaintances in the Communist Party. ^(TR 5080) At the request of Pettis Perry, a member of the National Negro Commission of the Communist Party, Fikes arranged a meeting at his house between Asbury Howard and Pettis Perry. ^(TR 5081-82) Perry asked Howard for a report on what was going on in the South and about Howard's contacts with Communist Party members in Alabama. ^(TR 5082)

171. Around the middle of 1958, Fikes and Mine-Mill functionary Chase Powers went out in Fikes' automobile to call on various employees of the American Brass Company to get them to vote for the Mine, Mill and Smelter Workers. ^(TR 5083) On the way, Fikes and Powers discussed the American

Communist Party and how it could be made a strong Marxist-Leninist Party like the one in the Soviet Union. (TR 5097-88)

172. There was objection by counsel for respondent to the Fikes testimony and to other evidence post-dating the filing of the petition, as has been discussed supra.^(SEE TR 5094-5096) Objection was overruled since post-petition evidence can be illuminating of the issues in a similar manner to evidence of events that happened prior to the petition and prior to the three year period set forth in the statute. For instance, petitioner's witness Barbara Hartle knew Harlow Wildman and Chase Powers as members of the Communist Party in the 1940s.^(TR 5248-76 5320) The testimony given about both of them by Fikes evidences that they have continued their Party connections while also occupying functionary positions in respondent. Moreover, the meeting in 1957 or 1958 between Asbury Howard and a national officer of the Communist Party, Pettis Perry, tends to show continuation of various instances throughout many years where functionaries of respondent have been getting together with high Party officials, even in the face of the constant complaints by some members of the Union of Communist orientation of the Union.

E. Policies and Programs of Respondent

173. As indicated in the findings supra, respondent has consistently taken positions in opposition to the foreign policies of the United States and in opposition to the domestic laws and programs of the Federal Government in the field of Communism. As will appear, petitioner presented evidence that the policies and programs of respondent and the views advanced by the leaders of respondent in these areas have had a consistent similarity with and have been substantially identical to the positions taken and advanced by the Communist Party of the United States.

174. For the most part the evidence of the policies and positions of the Communist Party, sometimes referred to by petitioner as the "Communist line" (see, e.g., A. G. Ex. 103A, B & C) consisted of material from the Daily Worker, The Worker, or Political Affairs, all shown on the record as official organs of the Party and authoritative of Party policy, position and program.^(E. G. TR 5324-27 "MINE MILL LINE") The policies and positions of respondent ("Mine-Mill line") were evidenced by resolutions adopted at the conventions or by actions of the Executive Board. Also, the positions or views of respondent's leaders were evidenced by statements made at conventions or at board meetings, or by articles published in the Union, respondent's official organ. Pertinent parts of the various publications, such as the Daily Worker and the Union, were received in evidence as A. G. Exs. 102 and 103. The material from the

documents was abstracted by topics in petitioner's exhibit A. G. Ex. 101. For reasons of competency or relevancy some of the material offered by petitioner to prove a position or policy was rejected. (See, e.g., tr. 5427.)

175. Findings will be made below on the topics and events as to which the evidence showed an identity of policies and positions of respondent and of the Communist Party. Consideration will then be given to the relevancy and probative value thereof to the issues in this proceeding.

176. (a) Significant to the coincidence of the policies of Mine-Mill and those of the Communist Party in earlier years were the positions taken and advanced by each concerning the Soviet Union and Nazi Germany prior to the Hitler-Stalin Pact of 1939, during the Pact, and after its abrogation in 1941.

(b) During the years prior to the Hitler-Stalin Pact, the Soviet Union, the Communist Party of the United States, and Mine-Mill all attacked Nazi Germany in particular and Italy and Japan as well. All came out against the neutral positions of the United States. The Communist Party U.S.A. and Mine-Mill criticized the Neutrality Act and urged that it be revised. In mid-1939, the Communist Party and also Mine-Mill urged a boycott on Germany, Italy and Japan, and an embargo on these nations. (See AG Ex. 101, pp. 1-17, PARTICULARLY pp. 1-4, 102 pp. 17-19, AG Ex. 102-C, pp. 4, 11-12, 15, 17-19, Ex. 103A pp. 2-9, 10; A.G. Ex. 103 D, pp. 1-14, 24)

(c) On August 23, 1939, Russia and Germany entered into a non-aggression agreement known as the Hitler-Stalin Pact. The Communist Party and also Mine-Mill thereafter took positions diametrically opposite to their former stands. Both came out for the United States observing a strict neutrality. Both changed from calling the European war one of fascist aggression to calling it a war of imperialism. Both opposed military preparedness on the part of the United States and demanded strict enforcement of the Neutrality Act. (See AG Ex. 101, pp. 2-12)

(d) In June of 1941, Germany invaded Russia. A volte-face again took place in the positions taken and advanced by the Communist Party and by Mine-Mill President Robinson. Both then came out for full aid and support to the Soviet Union in its war with what again became fascist aggression, and both the Party and the Union again urged repeal of the Neutrality Act. (AG Ex. 101, pp. 13-16)

177. After the entry of the United States into World War II, the Communist Party urged the opening of a second front in Europe without delay, and the Party exhorted labor not to lose a moment in agitating for a second front. (AG Ex. 101, pp. 17, 103A pp. 21-24) At the Mine-Mill convention in September of 1943, President Robinson in his report called for the invasion of western Europe without delay and tied this in with the building of friendship and understanding between the Soviet Union and the United States. (AG Ex. 101, pp. 17-18, 102-C, p. 48)

(AG Ex. 119, p. 19, MM Ex. 72, p. 97, PG Ex. 101, p. 21)
MM Ex. 72, p. 97, PG Ex. 101, p. 21
178. Similar positions calling for the United States to break diplomatic relations with "Franco-Spain" were advanced by the Communist Party and by respondent in the late 1940's. Similar positions were also advanced in 1948 against the Chiang Kai Shek regime in China, and, on the other hand, both the Communist Party and Mine-Mill advanced positions in 1949 and 1950 favorable to Red China and urging its recognition by the United States. (AG Ex. 101, p. 21, MM Ex. 102, p. 161-162)

179. The opposition of Mine-Mill to the Truman Doctrine and the Marshall Plan (supra) which was expressed in convention resolutions and also by the International Executive Board, was parallel with agitation by the Communist Party against those facets of United States foreign policy. Both Mine-Mill and the Party urged that the Truman Doctrine and Marshall Plan be scrapped. (AG Ex. 101, p. 28; MM Ex. 84, p. 13, MM Ex. 120 & 121)

180. In May and June of 1950, the Communist Party called on the American working class to wage a struggle for outlawing the atomic and hydrogen bombs. At the Mine-Mill convention held in September of 1950, President Clark took a strong position for outlawing these bombs and the convention passed resolutions to that effect. In May and August of 1950, the Communist Party in Political Affairs called for renewed energy on the part of the workers to sign up millions of people for the Stockholm Peace Petition. At the Mine-Mill convention in September of 1950, speakers for Mine-Mill locals reported that large numbers of signatures had been obtained for the Peace Petition, and the President's report favoring the Peace Petition was adopted by the convention. Further, the Communist Party and Mine-Mill took positions against the rearming of Germany and of Japan. (AG Ex. 101, p. 31-32, MM Ex. 101, p. 21, PG Ex. 101, p. 21, MM Ex. 120 & 121)

181. The Korean War and participation therein by the United States brought forth similar positions from the Communist Party and Mine-Mill calling for the United States to withdraw and for termination of the war. The 1951 Mine-Mill convention passed a resolution for the full restoration of peace in Korea, after hearing a speech by Irving Dichter, Mine-Mill official and member of the Communist Party (supra). The report of President Clark maintained that peace was easier to attain than it was made to seem by "the architects of U. S. 'cold war' policy." (M. M. Ex. 124, p. 215.)

1 There is no basis of record for finding that the various positions of respondent always were taken after the Communist Party had announced its position. In some instances or topics the evidence of the Communist Party position was contained in a document dated earlier than the material evidencing a similar or parallel position on the part of respondent. In other instances, the converse was true. Proof that the Party position always came before that of respondent is not a necessary element although the absence of such showing has been considered in evaluating the matter of the similarity of positions.

182. The Communist Party in Political Affairs for January of 1955, advocated "peaceful co-existence" between the Soviet Union and the western nations and took the position that peaceful co-existence was gaining ground against the resistance of Churchill and Eisenhower. (A. G. Ex. 103-B, p. 157.) Mine-Mill at its convention in March of 1955, came out for "The new idea, 'co-existence.'" (M. M. Ex. 127, pp. 40-44.)

183. At the 1949 Mine-Mill convention, President Clark (who was still President at the time of the hearing) included in his official report the position that "the struggle gripping America and the world today is between the peace camp on the one hand and the warmakers on the other." (M. M. Ex. 122, p. 247.) Clark attacked the Atlantic Pact that had recently been ratified by the United States Congress as an "alliance for war" and "a futile and stupid attempt at policing the world." (P. 273.) He declared that "a conflict between this country and Russia is as unnecessary as it would be disastrous." (P. 273.) He urged a German peace treaty and getting both Russian and American troops out of Germany. ^(p. 274) A resolution to adopt the President's report on foreign policy was made and passed by the convention. ^(pp. 213-218) Irving Dichter, found supra to have been a member of the Communist Party and who was later appointed a member of the International Board and still later, in 1959, appointed International Secretary-Treasurer (supra), took the floor in favor of the resolution. ^(p. 214) His remarks included high praise for the Soviet Union and the "Eastern European democracies," and he urged that the United States extend foreign trade with them. (M. M. Ex. 122, pp. 214 & 215.)

184. At the 1952 Mine-Mill convention one Karen Morley, a guest speaker, made a quite provocative speech downing the United States Government and strenuously condemning what she called the crusade against Communism. She accused the United States of killing children in Korea by dropping jellied gasoline, and of decimating the country. She predicted that the people in France and other countries will not fight for what she called American corporate profits, and said that the United States could not dare to arm them to fight the Soviet Union. ^(M. M. Ex. 125, pp. 67-72) At the completion of her vehement tirade against the United States there was "Prolonged applause and delegates arose"; President Clark said to the speaker and the convention that her thinking "is the thinking of all of us" and that the leaders of Mine-Mill and "many of its rank and file, have spoken in the same tone." (M. M. Ex. 125, pp. 67-72.)

185. Also at the 1952 convention, Irving Dichter took the floor to proclaim that "the two major political parties in this country today are loaded dice" and "The time has come to have a party of the people." (M. M. Ex. 125, pp. 175 & 176.) Among other things Dichter advanced was "The

time has come to say to hell with the Dixiecrats, to hell with the corrupt politicians, to hell with big city machines that are alive with the gangsters and the pimps, to hell with General Foods, to hell with General Electric and General Motors; we have too many generals in this country." (P.175.)

186. The record is replete with instances, of which the findings heretofore made in this section are illustrative, where the Communist leadership of respondent has aligned Mine-Mill with the Communist camp of the world and has taken and advanced positions in their official capacities which have been identical with the positions of the Communist Party of the United States. The identity of policies and positions of Mine-Mill and the Communist Party was consistent during the many years covered by the record, which starts with the reversals of positions as the relationship between the Soviet Union and Germany changed during the years 1939-1941 (supra); continued through the Truman Doctrine, the Marshall Plan and the Atlantic Pact in the late 1940's and early 1950's (supra); and still continued with the advancing of "peaceful co-existence" in 1955 (supra).

187. The positions of Mine-Mill and of the Communist Party regarding the foreign affairs and relations of the United States have consistently been against the United States - it has always been the United States at fault, never the Soviet Union. The latter, in fact, has been consistently praised. Persistent efforts have been made, and with apparent success as the findings supra indicate, by the Communist leaders of Mine-Mill to convince the membership of the Union that Wall Street and the United States Government are their enemies.

188. As the findings made below will illustrate, the policies and the position taken and advanced by respondent and by the Communist Party have been identical in opposing and urging elimination of the domestic laws of the United States designed to hamper and expose the Communist movement.

189. Related to similar positions of the Communist Party and Mine-Mill in blaming the United States for the cold war and of seeking to start a war with the Soviet Union (supra) were the similar positions of both on the Selective Service Act and military conscription. The Communist Party in Political Affairs for June and September of 1948 advocated against peacetime conscription in the face of what the Party called popular opposition. Mine-Mill at its convention in September of 1948 and in its official organ, the Union, for October 25, 1948, demanded repeal of the peacetime draft and complained about "peacetime conscription." (M.M.Ex. 121, p. 169.)

190. Mine-Mill strongly opposed and condemned the anti-Communist affidavit requirement of the Taft-Hartley Act and the provisions of the Smith

Act, a criminal statute dealing with efforts to overthrow the Government of the United States by force and violence. Evidence of Mine-Mill advocacy of opposition to these laws and efforts to stir up sentiment against them included resolutions passed at conventions during the period 1949-1955, actions of the International Executive Board from time to time in this period, and editorials in the Union newspaper. Evidence of the Communist Party positions included material from the Daily Worker in 1950 and Political Affairs in 1951 and 1953. Not only did Mine-Mill and the Party condemn these Acts and urge activity to cause their repeal, both the Party and Mine-Mill advanced the parallel propaganda that these Acts were anti-labor, a manifestation of the capitalist efforts to destroy freedoms of the people, and part of a cold war drive of the business interests. Included in the approaches taken by both Mine-Mill and the Communist Party was that Taft-Hartley and the Smith Act were edges of a capitalist sword with which to destroy labor unions.

191. Congressional committees investigating subversive activities in the United States have been the subject of strong, similar, and parallel attacks by the Communist Party and Mine-Mill from the beginning of the committees in the late 1930's up to the time of this proceeding. The Party and Mine-Mill have campaigned for putting an end to these committees. In attacking the Congressional investigating committees both Mine-Mill and the Communist Party have advanced the proposition that the committees operate against labor. By way of example: the Communist Party in Political Affairs for June 1948 advanced the position that the elevation of the House Committee on Un-American Activities to the status of a permanent body paved the way for, among other things mentioned, "the persecution of . . . labor leaders on trumped-up perjury charges," (A. G. Ex. 101, p. 56); Mine-Mill, at its convention in September of 1948 adopted a resolution calling for the abolishment, among others, of the House Committee on Un-American Activities which was accused in the resolution of attempting "to smash the trade union movement" (M. M. Ex. 121, pp. 222-224). In this resolution the position was advanced that the Government of the United States was endeavoring "to get the American people into a mental state of accepting war with the Soviet Union." (P. 223.) In the official call to the 1951 Mine-Mill convention the statement was made that during the year "We saw the lives of Loyal Americans ruined by the depraved antics of the so-called Un-American Activities Committee" (M. M. Ex. 124, p. 38).

192. The efforts of the Communist Party to attack the Government of the United States have included positions denouncing the Federal Bureau of Investigation and the Immigration and Naturalization Service of the Department of Justice. Mine-Mill has likewise attacked the F. B. I. and

the I.N.S. Both the Party and Mine-Mill have also opposed the Federal Employees Loyalty Program. (H.G. Ex. 101, p. 64; MIM Ex. 95; APP. II, p. 5)

193. The Communist Party in an article in the Daily People's World for April 11, 1951, condemned the conviction of Julius and Ethel Rosenberg for espionage on behalf of the Soviet Union as "designed to shock the American people into a sense of emergency and of danger from the Soviet Union which they do not feel" (A.G. Ex. 103A, p. 70 1/2). At the 1952 Mine-Mill convention, President Clark urged its locals to register protests against the conviction of the Rosenbergs, and resolutions to that effect were passed by the convention. (H.G. Ex. 98, pp. 124-125, 232)

194. In the 1950's convictions on criminal charges were made in cases known as "the Trenton Six," "Willie McGee," and "the Martinsville Seven." The Communist Party came out against these convictions and urged action to free all of the defendants. Mine-Mill also came out in support of these various defendants. Illustrative of the similarity of positions, the Communist Party in the Daily Worker for June 30, 1950, took the position that "the world's people" well know that Willie McGee and the Martinsville Seven had "committed only one 'crime' -- they were born with black skins." (A.G. Ex. 103A, p. 50.) At the 1951 Mine-Mill convention, President Clark, in his official report, declared that: "World-wide protests in both the McGee and 'Martinsville Seven' cases failed to halt these barbarous killings of men who, in the eyes of millions, were victims of 'Jimcrow Justice.'" (A.G. Ex. 102C, p. 141.)

195. The Communist Party, as evidenced by the Daily Worker for February 6, 1951, took the position that the United States practices genocide against Negroes in America and against the colored peoples of Asia. The same charge of acts of genocide against the Negro people by the United States Government was made by Mine-Mill at its 1952 convention. (H.G. Ex. 98, p. 124)

196. In 1948 the Communist Party supported the Progressive Party and Henry Wallace in the national elections. This was paralleled by the report of Mine-Mill President Clark at the 1948 Mine-Mill convention in which he characterized the Progressive Party as "the most auspicious development on the American political scene in many a year." (A.G. Ex. 101, p. 66.)

197. There is no instance in the record where respondent has taken a position which varied from a position or program of the Communist Party.

198. The theme that the foreign policy of the United States has not been in the best interest of the working people, and the theme that the

domestic programs of the United States aimed at controlling subversion and preserving the national security are actually aimed at destroying trade unions, appear in various forms and with various pitches throughout the record of actions taken by Mine-Mill and positions advanced by the Communist leaders of Mine-Mill. A reading of the record is convincing that a major program of respondent throughout the many years covered by the evidence has been one of stirring up and advocating hate for and distrust in the Government of the United States and advocating action to change the foreign policy and the domestic policy in the field of Communism. On the other hand, whenever the Soviet Union has been referred to in convention resolutions or in statements by the leadership of respondent there has been a complete absence of criticism and usually praise. In addition to the findings already made passim, a few further illustrations selected more or less at random will be set forth.

199. A resolution approved at the 1953 convention to repeal Taft-Hartley recited that "The government of the U.S. A., through the perfidious machinery of the infamous Taft-Hartley Act, has seen fit to attack Labor" (M. M. Ex. 126, p. 91.) A resolution approved at the 1955 convention recited that insistence upon "'unanimity' in every important phase of national life is rapidly becoming the policy of our national government." (M. M. Ex. 127, p. 84), that "All over the world we here in the United States are watched with pity, amazement and a great deal of amusement" (p. 85), and that "The informer and stoolpigeon hold court over a fear-ridden land" (p. 85). Another resolution passed at the 1955 convention recited that the heart of the Communist Control Act of 1954 "is its anti-union sections cloaked with provisions seemingly directed only against Communists." (M. M. Ex. 127, p. 162.) At the 1956 convention, International Vice President Asbury Howard (found supra to have been a member of the Communist Party) advanced the view that the real enemies of the working class are those that are "passing the right-to-work laws, the Taft-Hartley laws, the Brownell-Butler laws" (M. M. Ex. 128, p. 62.)

200. There was no dispute in the record that Mine-Mill has opposed the Taft-Hartley Act, the Smith Act, the Federal Employees Loyalty Program, the Alien Registration Act, the McCarran Act, and the Brownell-Butler Act, among others. (See, for instance, Part 5 of President Clark's report to the 1956 convention.) (M. M. Ex. 128, pp. 238-241.) And, it was not disputed, as stated by President Clark in remarks made at the 1949 convention, that Mine-Mill combats "the extension of American monopoly to other lands" which is in the form, according to the position taken by Mine-Mill "of raw, rank imperialism." (M. M. Ex. 122, p. 25.) The merits of the positions taken and advanced by Mine-Mill or its leaders in their capacity as such are of no concern in this proceeding. The relevancy of the policies, positions and programs taken and advanced by respondent is limited to

whether they evidence domination by the Communist Party and support of the Communist Party, as will be outlined below.

201. A substantial number of the leadership of respondent have been members of the Communist Party (supra). The Communist Party member-leaders of respondent have advanced positions to the membership of respondent and the membership itself has taken and carried out policies and positions which have been consistently identical with the policies and positions of the Communist Party (supra). The Communist leaders of respondent have gained the confidence and support of the majority of the Union membership (supra). It follows from this and other evidence of record that to a real and significant extent the policies of respondent have been formulated and carried out pursuant to the direction or advice of the Communist leadership. (See section 13 (A)(e)(2) of the Act.)¹

202. It is a policy of the Communist Party that its members in labor unions educate the workers that the Government of the United States is their enemy (supra). The Communist leaders of respondent have consistently done this (supra). It is a policy of the Communist Party to have Party members and Party sympathizers in positions of authority in labor unions (supra). The Communist leaders of respondent have appointed to staff positions in respondent many members of the Communist Party (supra).

203. There was evidence showing specific, strong interest by the Communist Party in Mine-Mill, and of Communist leaders and functionaries of Mine-Mill attending Communist Party meetings with Party functionaries not in Mine-Mill at which Mine-Mill affairs were discussed (supra). The actions of the Communist leaders of Mine-Mill in consistently advancing positions and programs identical to the positions and programs of the Communist Party in opposition to the foreign policies of the United States and to the Federal laws aimed at preserving the national security are strong indications, among other indications of record, that the Communist leaders of Mine-Mill were using Mine-Mill to implement the policies of the Communist Party.²

¹ Further evaluation of the evidence, taken as a whole, is made in the "Concluding Findings," infra.

² At a Communist Party meeting in 1950 attended by petitioner's witness Morales and other Mine-Mill functionaries there was discussion of the Korean War and Party pamphlets on the subject were distributed. The positions of Mine-Mill were the same as those of the Communist Party regarding the Korean War (supra). (7K 3725-22)

F. The Evidence Presented by Respondent

204. The evidence presented by respondent was primarily in the nature of an affirmative presentation or defense and thus warrants separate consideration and evaluation.¹

205. A major portion of the testimony and exhibits presented by respondent was designed to show a democratic character of the Union. Some 111 persons from some 55 local unions were at the time they testified, or had been, officers of the locals and members of respondent for varying periods up to many years. In addition, respondent put in evidence copies of all of the minutes of its International Executive Board from 1946 to 1955, when the petition in this proceeding was filed (M. M. Exs. 71-118) and copies of all of its annual convention proceedings from 1946 to 1960 (M. M. Exs. 119-132). The testimony of the rank and file members was uniform and similar. For this reason and to avoid unduly extending the findings, the testimony and documentary material will not be detailed.

206. These witnesses testified, and it is found, that the officers of the local unions are elected by secret ballot of the local membership following nominations made at meetings in advance. Any member of the locals who is current in the payment of his dues is eligible for office and to make nominations. Local unions are represented at the annual conventions by varying numbers of delegates depending upon the size of the locals. The convention delegates are chosen by the local members by nomination and election.

207. Strikes and collective bargaining agreements are decided by vote of the membership of the locals. Where locals have endorsed political candidates in state or national elections or have taken positions on legislation these have been on the basis of discussion and vote of the membership.²

¹ Certain aspects of the testimony and documentary material presented by respondent have been considered in arriving at the findings heretofore made. This includes, among other things, the rebuttal by Mooney and Salvas for respondent of some of the matters about which petitioner's witness Gardner testified. It also includes the testimony by a large number of respondent's witnesses that International officers and staff members who had been identified with the Communist Party by petitioner's witnesses had never told respondent's witnesses that they belonged to the Party or tried to get respondent's witnesses to join the Party.

² Not many of the locals represented by the witnesses called by respondent have had any regularity in endorsing political candidates. Some have never done so and with others it has been limited to candidates for the state or national legislatures from time to time.

208. Most of the witnesses were asked and gave the opinion that democratic procedures are fully observed at local meetings and that the witnesses have not observed any indication of control by the Communist Party or any outside influence.

209. A number of the rank and file member-witnesses had been elected by their locals and attended as delegates one or more of the annual conventions. They testified that anyone who desired was given the floor to speak on any matter at the conventions. This also appears from the convention proceedings. The resolutions adopted and other actions taken at the conventions have been on the basis of a majority vote. The witnesses testified to a man that they never noticed anything at the conventions to indicate the conventions were run or influenced by the Communist Party. On cross-examination those witnesses who were asked said that they knew nothing about the Communist Party or the tactics and strategy of the Communist Party in the labor movement.

210. Three of respondent's witnesses (M. C. Anderson, Verne Curtis, and Ernest Salvas) were members of the International Executive Board at the time they testified. Anderson first became a Board Member by appointment in December of 1959. Curtis was appointed Board Member in April of 1960. (TR 9343) Salvas was appointed a Board Member in 1954 and was subsequently reelected in 1957 and 1959. (TR 9353) He was defeated in 1961. (TR 9344) Each of these three witnesses had been employed as International representative for a number of years before being appointed to the International Board. Each had run for the office of Board Member prior to the year when they were appointed. Each testified to the effect that no one ever told him that it was necessary to be a member of the Communist Party in order to run for International office, and that he was not threatened with loss of his job as International representative for running against the incumbent office holders.

211. The witnesses for respondent who were International representatives at the time of their testimony included: Glen Buckner who was hired for the job in June of 1960; Edward Coleman, hired in July of 1955; Angelo DeStefano, hired in July of 1960; Jesse Doster, an International representative since 1940; Michael Gazy, hired in February of 1956; Jacob Mercado, hired in June of 1960; and, J. P. Mooney, who became an International representative in 1943. (TR 9493)

212. (a) Because it is fairly representative of that given by most of respondent's witnesses, the testimony of Jesse Doster will be set forth in detail, including that elicited on cross-examination.¹

¹ At the time of testifying, Doster was the International representative serving Local 870 covering nine plants, Local 838 covering four plants, and Local 863 covering five plants. The combined membership of the three locals was around 950. The locals are located in Mine-Mill District 5. (TR 6330-31, 6336, 6348)

(b) When Doster was offered, and accepted, the job as International representative, he was not asked if he was a member of the Communist Party nor told he had to be a member to have the job. The servicing of a local that is performed by International representatives consists of handling grievances and arbitrations; the representative sometimes audits the books of the local; he attends meetings of the local but has no voice unless he is also a member of the particular local; the trustees and officers of the locals frequently ask advice of the International representative and he has a great deal of influence with officials and members of the locals; the International representative participates in negotiations on behalf of locals and sees that locals follow the constitution with respect to election procedures. The representative in servicing a local works with it but has no say in the meetings unless he has a progress report to make; he has nothing to do with the operation of the local unless there is a violation of the International Constitution.

(c) The usual local meeting is called to order by the president, there is an invocation, roll call of officers, minutes of previous meeting read, officers' reports, reports of committees, communications read, unfinished business considered, new business taken up, International representative asked if he has anything to say, and motion for adjournment. Local union executive boards have no authority to make any decisions, all they can do is recommend to the local membership. Attendance at meetings is around one-fourth to one-third of the membership except when negotiations are going on at which time there is a large attendance. Various things such as raffles have been used to improve attendance. When a contract is negotiated for a local it is signed by the International Executive Board member, then by the International representative, then by the entire local negotiating committee.

1 Petitioner's witness Henderson was a functionary of Local 18 (Mine-Mill District 7) in the year 1954. During June of 1954 he attended a meeting of the local at which the recording secretary read the minutes from a previous meeting at which the president of the local had accused certain of the members of following the Communist Party line and wanted to know if they were Communists. James Dougherty, an International representative (found supra to have been a member of the Communist Party) said the president had been out of order asking questions about political beliefs. Rudy Hanson, also an International representative (and member of the Communist Party, supra) agreed, called the action of the president "red-baiting," and accused the president of being a company agent. There was a motion to strike the minutes but Pete Piekarski, also an International representative (and member of the Party, supra) took the floor and said that a few years earlier a motion had been passed that Communism would not be brought up on the floor of the Union and, therefore, the president's questions and accusations would be automatically stricken. This is an instance where the International representatives were quite verbose at a local meeting when a matter outside of routine local business was discussed.

(d) An International representative makes regular, periodic, reports to the International on grievances and negotiations handled and other matters on forms provided by the International; a copy of the reports goes to the Executive Board Member for the district who gives his approval by signing the reports; the International representative writes to the International for advice; he submits vouchers to the International Financial Secretary. (TR 6346-74)

(e) Nominations for International officers and board members are made at annual conventions and elections are by a referendum vote of all members of the Union. (TR 6341-42, 6350-51) The International sends ballots to the local unions based on the per capita membership, after the members have voted the ballots are returned to the International office, together with all unvoted and spoiled ballots. (TR 6376-77, 6377) A canvassing committee composed of one rank and filer from each district makes the final count of the ballots at the International office. (TR 6376)

(f) Every paid-up member of a local affiliated with the International Union receives a copy of the newspaper put out by the International. (TR 6376-77)

(g) In the period of 1947-1949 there was discussion in the locals of District 5 on whether the locals should comply with the non-Communist affidavit requirements of the Taft-Hartley Act. Doster was for noncompliance and so were the locals. In 1949 when the Mine-Mill International complied, Doster and the locals in District 5 agreed with the change in policy. (TR 6355-66) The first information that Doster had that the International had changed its policy came from the "Union" newspaper but Doster had changed his mind on noncompliance before he read the Union. (TR 6376-77) The secession movement in Birmingham had much to do with Doster changing his mind on Taft-Hartley compliance because the Union lost some 4,000 members to another union in April of 1949. (TR 6377-79)

(h) Doster attended the 1953 Mine-Mill convention and when he arrived he was informed by one Frank Allan that Asbury Howard was going to be nominated for Eastern Vice President, and Doster was asked to support Howard. Charles Wilson nominated Howard. Before the nomination, Doster attended a District 5 caucus where it was agreed unanimously to support Howard. (TR 6339-42)

(i) Doster had known Asbury Howard and Charles Wilson for many years. Neither ever told Doster that he was or had been a member of the Communist Party nor ever asked Doster to join the Party. (TR 6365-66) No officer of Mine-Mill ever told or suggested to Doster that he had to be a member of the Communist Party to have a job with Mine-Mill. (TR 6367) Doster never asked any of the Mine-Mill International officers or staff members if they were members of the Party, and Doster knows nothing about the Communist Party or of the Party's strategy

and tactics in labor unions. (TL 6379-82)

213. Continuing with the consideration of respondent's affirmative presentation, respondent in its proposed findings relies extensively upon an article by Leo Bromwich entitled "Union Constitutions" that appeared, according to respondent, in "The Fund for the Republic, 1959." (Proposed Findings, p. 2.) The "study," as respondent refers to it, was not offered or received in evidence, is not a part of the record, and no copy was provided. Respondent states in its proposed findings that the constitution of the International Union of Mine-Mill and Smelter Workers is compared favorably by Bromwich with those of other unions in providing fairness in election procedures and other union matters.

214. As indicated from the findings already made, respondent's witnesses were permitted to testify, over petitioner's objection that the testimony was irrelevant and immaterial, to facts and their opinion that Mine-Mill has been run "democratically." In a few instances, the witnesses referred to the procedures of other unions. However, the character of other unions is not at issue in this proceeding and facts on such matters as how other unions elect their officers, or how they fix salaries, would unduly burden the record and would not have any substantial bearing on whether Mine-Mill meets the statutory definition of Communist-infiltrated.

215. In addition to testimony as to "democracy" in Mine-Mill as they saw it, petitioner's witnesses, as has been set forth supra, testified to their satisfaction with the economic gains made over the years under the banner of Mine-Mill. The Research Director, Stern, testified in considerable detail to contract negotiations, to the economic issues in many of the strikes that have taken place during negotiations, and to the terms of the agreements reached; he showed how the Union developed industry-wide negotiating, nationwide wage policy activity, and uniform patterns of package settlements. Various statistics were presented by respondent through the witness Stern on such things as wage gains in various industries, fluctuations in copper prices and the effect on negotiations, and the increasing scope or area of bargaining. To give just one example, according to Stern the consumers wage index increased 62.7% from 1946 to 1960 while average hourly earnings in copper mining went up 159.2%. (TL 8082)

216. There was no dispute in this proceeding over the economic aspects of the Union's operations and no useful purpose would be served in giving further consideration to this aspect of respondent's affirmative presentation. It is quite clear from the record that Mine-Mill has in fact devoted substantial time, money and effort to the economic matters for which labor unions are formed.

217. The issues in this proceeding turn upon non-economic matters: the Communist Party membership or Communist orientation of the leadership of respondent, and the implementation of Communist Party policy within the Union. It was ruled at the close of petitioner's case in chief that a prima facie showing had been made. Respondent did not fully meet the issues raised by petitioner's evidence. None of the persons directly involved, with the exception of Mooney and Salvas in connection with some areas of Gardner's testimony (supra), were called to deny or explain the facts established by petitioner.

218. The record shows that the matter of Communism within the Union has been met, if at all, by the use of the term "red-baiting." The term was used by a number of respondent's witnesses and also appears in documentary material, such as the convention proceedings. Examples will now be given and will show the consistency and manner of the use of the term.

219. Criticism made to Mine-Mill President Robinson by Mine-Mill representatives that the difficulties of the Union in Connecticut in 1942 arose because of Communist Party activity were met by Robinson calling the representatives "red baiters." (Tr. 254.) On another occasion, when Rasmussen expressed the belief that the difficulties within Mine-Mill came because of too much interference from the Communist Party within the Union, President Robinson's only reply was that he was sorry that Rasmussen had engaged in "this red baiting attack." (Tr. 262.) Included in a statement of policy adopted by the International Executive Board in 1946 was the following:

Members of this union shall be judged on the basis of their contribution and loyalty to the organization and nothing else. "Baiting" of Negroes, Catholics, Protestants, Jews, "reds," C. C. F.'ers — is denounced as a form of religious and political persecution contrary to the aims of democratic unionism. (A. G. Ex. 10, p. 131.)

At the 1947 convention, Robinson, at the time no longer President but a delegate to the convention, took the floor and advanced the position that the monopoly capitalists will continue to "red-smear" any progressive political thinking to prevent labor achieving the things to which it is entitled as the producers of the wealth of the country. (M. M. Ex. 120, pp. 210-214.) By order of Maurice Travis, International President at the time, the speech of Robinson was to be printed in the "Union." ^(p. 15) Resolutions were passed at the 1948 convention condemning "red-baiting" as tactics used by the enemies of labor to destroy trade unions and enslave the workers (M. M. Ex. 121, pp. 157-158 & 166-167). The 1952 convention passed a resolution denouncing

the "red-baiting" tactics used by the C. I. O. in branding Mine-Mill as Communist controlled (M. M. Ex. 125, pp. 49 & 50). Respondent's witnesses Arthur Porter, Juan Aranda, Jr., Gabriel Cedello, Jr., Luther Church, and Walter Romero all used the term "red-baiting" to mean that the Union was charged with being Communist or Communist-controlled. (Tr. 8252-8279, 8277, 9246-47, 8248) Respondent's witness Stern testified that some workers who left Mine-Mill had been affected by "red-baiting," the charges that the Union was run by Communists. (Tr. 8050.) Stern defined "red-baiting" as smearing a person with epithets because of positions taken at any particular time and trying to injure the person or destroy him by use of epithet rather than by use of reason. (Tr. 8275) According to Stern, "red-baiting" amounts to classing an argument as a Communist argument without trying to meet the argument on its merits. (Tr. 8260-01)

220. The findings made above on the use by respondent of the term "red-baiting" in reply to charges of Communism within the Union are not to be taken as putting any special significance on such use. The bearing upon the issues in this proceeding is that respondent neither here, nor throughout the many years of charges within the Union itself of Communist domination, has denied the existence of grounds for the charges. Rather than deny that officers have been Communist Party members and that Communist policy has been implemented in the Union, the excusing term of "red-baiting" has been used. The facts adduced in this proceeding show that denials could not truthfully have been made. Moreover, the Communist leaders of respondent have successfully prevented the passage of any regulations which would bar Communists from holding positions of leadership and trust (see supra). And, various of respondent's own witnesses testified that they had no objection to Communists holding office in the Union.

CONCLUDING FINDINGS

221. The International Union of Mine, Mill and Smelter Workers, respondent, is an organization in the United States within the meaning of section 3 of the Subversive Activities Control Act of 1950, and is a labor organization as defined by section 2 of the National Labor Relations Act, as amended. Respondent is not formally affiliated with any other labor federation or labor organization.

222. It is quite clear from the evidence that many important functionaries of respondent are and have been members of the Communist Party, and that other important functionaries are persons who are and have been amenable to the Communist Party. This situation prevails with respect to the

International Executive Board to the extent that the Executive Board is and for many years has been dominated and controlled by the Communist Party members on the Board. A substantial number of the staff members who assist the Executive Board are and have been members of the Communist Party.

223. The International Executive Board, which consists of four officers and a Board member for each of the various districts, exercises the powers, among others: to appoint officers and Board members to fill vacancies that occur between biennial elections; to hire and fire the International staff members, including International representatives who deal with and service the local unions; to appoint the chairman and members of the convention committees; and, to direct and control the content and publication of the official Union organ.

224. It was conceded by counsel for respondent that the International Executive Board "has the power to make decisions or to make policy in this union between conventions." (Tr. 5450.) This was also established by the evidence. Moreover, the Communist Party members have gained and maintain the full faith, confidence and support of the majority of the convention delegates to the extent that the conventions have consistently taken actions and adopted policies and programs favored by these officials, and the conventions have consistently rejected matters not favored by these officials. In a nutshell, the record established that the majority of the convention delegates have accepted without question or outward concern — "take their word for it" as one of respondent's witnesses testified — the views expressed and the policies advanced by those on the governing board who are Communist Party members and those who are amenable to the Communist Party.

225. Communist Party members together with persons who are both amenable to the Communist Party and submissive to the actions of the Party members, comprise the majority of the International Executive Board. There can be no real doubt from the record as a whole, and the evidence, which stands mostly un rebutted, was convincing, that respondent is and for many years has been substantially directed, dominated, and controlled by a group of Communist Party members.

226. To a quite significant extent the power to fill vacancies has been exercised in the appointment of members of the Communist Party to positions on the governing board, and the board has hired an impressively substantial number of Communist Party members to staff positions in the Union. The persons occupying dual roles of members of the Communist Party and officials of respondent have on numerous occasions met with high functionaries of the Communist Party to discuss the affairs of respondent. These officials

of respondent as well as a number of the individuals who were hired as International representatives have attended and participated in Communist Party meetings at which the affairs of respondent were among the subject matters. The record contains instances where functionaries of respondent have reported to the Communist Party on the affairs of respondent and on the activities of functionaries of respondent in performing their duties in respondent.

227. The course of conduct over extended periods of respondent's officials Raymond Dennis and Irving Dichter are illustrative.¹ The Communist Party was instrumental in Dennis becoming a member of respondent's leadership group. Arrangements were made at a Communist Party meeting for his predecessor on the Mine-Mill Board, Communist Jesse Van Camp, to step down in order that Dennis could be nominated. Dennis in 1951, not long after becoming a top leader of respondent, hired Communist Party member Gardner to be an International representative in Dennis' district of the Union, and Dennis instructed Gardner in addition to his Union duties to work for and in behalf of certain organizations in which the Communist Party had strong interests. Gardner in fact devoted considerable time and effort working with these groups while being paid by respondent. Dennis in 1951 met with the Communist Party official in charge of organizing Party branches in various labor unions, and Dennis discussed respondent's affairs with this Party official. In 1953, Dennis discussed Mine-Mill matters with officials of the Communist Party who were operating underground.

228. Irving Dichter was shown as long ago as the year 1942 to have attended and participated in closed meetings of the Communist Party at which Mine-Mill matters were discussed. In 1943, Dichter sent a Mine-Mill clerical employee who was a member of the Communist Party to see a high State officer of the Communist Party for instructions on Communist Party policy. More recently, Dichter, in 1953, attended a meeting of the Trade Union Commission of the Communist Party held to plan Communist Party activity at the C. I. O. national convention. This was after Mine-Mill had been expelled from the C. I. O. In 1954, Dichter was made a member and participated in meetings of a concealed or secret board of the Communist Party. Dichter in 1955 investigated for the Communist Party the activities of a Mine-Mill staff official and Party member. Also in 1955, Dichter referred to respondent as one of the last voices of the Communist Party in

¹ No single item of evidence, in and of itself, conclusively established the ultimate facts and the determinations must, of course, be made upon considerations of the record as a whole. Where subsidiary facts already found are repeated in this section they are for purposes merely of illustrating the type of evidence involved.

the trade union movement. Dichter has taken an active role at the conventions of respondent. He spoke at the 1949 convention in high praise of the Soviet Union.

229. The Communist Party activities of the Party members on respondent's staff were equally revealing. Illustrative are the facts that: in 1954 the editor of respondent's official organ reported at a Communist Party meeting on Lenin's book "What Is To Be Done";¹ in late 1950 an individual who a few years later was made an International representative on respondent's staff, taught classes at a Communist Party school to educate the Party members present on applying the theory of Marx and Lenin,² and Mine-Mill members were among the students at these classes; a Mine-Mill clerical employee, still with the Union at the time of the hearing, was in charge of checking security at a meeting in 1952 of the Colorado State Committee of the Communist Party and was shown in attendance at Party meetings in 1954; Communist Party meetings have been held at the homes of various of the Mine-Mill staff members.

230. In the history of respondent the issue of Communism has brought about the loss of considerable members, the expulsion of the Union from the C. I. O., the dismissal from the Union of anti-Communist staff members, and secessions by a number of local unions. Respondent chose to suffer expulsion from the C. I. O. rather than accept a requirement that Communist Party members be barred from Union office, and respondent since has consistently adhered to a policy of refusing to change its constitution so as to bar Communists from office in the Union. Various persons who held functionary positions in respondent have been discharged after taking anti-Communist positions. Persons who were members of the Communist Party and were expelled from the Party were thereafter discharged from the Union. The situation within Mine-Mill International, based on this record, has been and is one where there is an affinity for the Communist Party.

231. The majority of the leadership of the International has consistently pursued and advanced policies and programs in opposition to the Government of the United States in its foreign policies and in the domestic laws and programs designed to combat the Communist movement in the United States. The positions taken and advanced by respondent have never deviated from the

¹ The theories of Marx and Lenin, some of which are contained in Lenin's book "What Is To Be Done," were found by this Board in Attorney General v. Communist Party of the United States, affirmed sub nom Communist Party v. Subversive Activities Control Board, 367 U.S. 1 (1961) to be part of the doctrine followed by the Communist Party.

² See footnote "1", above.

positions taken and advanced by the Communist Party of the United States. There has been for many years a large part of the time and effort of respondent devoted to advancing policies and programs similar to the policies and programs of the Communist Party and which were removed from the normal economic and welfare matters usually the subject of labor union activity.

232. The effective management of the affairs of the Union is conducted by the International Executive Board with the assistance of the staff personnel. By reason, among other things, of being active in both the Union and the Communist Party, attending Communist Party conclaves, meeting with high functionaries of the Communist Party, and taking positions and carrying out activities consistent with Communist Party policy, the conclusion is required that the Communist Party members on the Executive Board have knowledge of the nature and purposes of the Communist Party. (See section 13 (A)(e)(1) of the Act.)

233. To a quite substantial extent the policies of respondent are and for many years have been formulated and carried out by or on the advice of the Communist Party members holding leadership positions in respondent and by those leaders who, while not shown by the evidence to be members of the Party, were shown to be amenable to the Communist Party and to cooperate closely with the Party member-officials. (See section 13 (A)(e)(2) of the Act.)

234. The Union is being and for many years has been used to a significant extent to further and promote the objectives of the Communist Party, particularly with respect to the Party objectives as to the trade union movement. This was evidenced, among other substantial matters, by the fact that top leaders and important staff members of respondent have met with officials of the Communist Party, who were not members of respondent, for the purpose of planning and discussing respondent's affairs, and by the success of the leadership of the Union in keeping the Union orientated along Communist lines. (See section 13 (A)(e)(3) & (4) of the Act.)

235. While there was not sufficient evidence to show a technical affiliation of respondent with the Communist Party of the United States there was, as stated, strong showing that respondent has been and is working in behalf of the Communist Party upon a consistent basis over a long period of time. (See section 13 (A)(e)(5) of the Act.) The Communist Party members in respondent have, with but few exceptions, concealed the fact of their Party membership and continue to do so. (See section 13 (A)(e)(6) of the Act.)

236. The aid and support flowing to the Communist Party from respondent and its controlling leadership has been real, substantial and significant. Through respondent, the Communist Party has acquired and continues to have

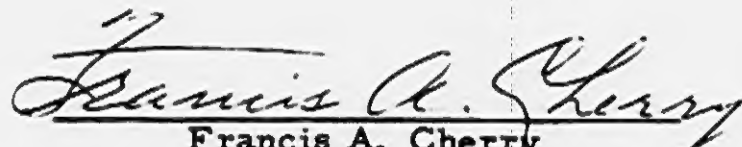
a dependable foothold in the labor movement in the United States. The Communist orientation of the Union and the blind faith with which the majority of the members follow and support the Communists holding leadership positions, constitute respondent an organization through which the Communist Party can work with respect to a sizable section of the working class.

237. On the basis of the entire record, it is concluded that respondent (A) is substantially directed, dominated, or controlled by individuals who are, or within three years have been actively engaged in, giving aid or support to the Communist Party of the United States, a Communist-action organization, and (B) is serving, or within three years has served, as a means for the giving of aid or support to such Communist Party.

238. It follows that respondent is a Communist-infiltrated organization as defined in the Act.

RECOMMENDATION

It is recommended that the Board issue and cause to be served upon each party to this proceeding an order granting the determination sought by the petition of the Attorney General of the United States that respondent is a Communist-infiltrated organization within the meaning of section 3(4A) of the Act.


Francis A. Cherry
Member of the Board - Examiner

Washington, D. C.
December 26, 1961

SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 116-56

ROBERT F. KENNEDY, ATTORNEY GENERAL
OF THE UNITED STATES, PETITIONER

v.

INTERNATIONAL UNION OF MINE, MILL AND SMELTER
WORKERS, RESPONDENT

ORDER OF THE BOARD

The Board, after full hearing upon a petition of the Attorney General, having this day issued its findings as to the facts, and having determined that respondent is a Communist-infiltrated organization, it is

ORDERED that the petition of the Attorney General be and it is hereby granted and the International Union of Mine, Mill and Smelter Workers is declared to be a Communist-infiltrated organization within the meaning of section 3 of the Subversive Activities Control Act of 1950, as amended by the Communist Control Act of 1954.

By the Board (Chairman Lee not participating).



Francis A. Gerry, Member

Thomas J. Donegan, Member

James R. Duncan, Member

Harold C. Perry, Member

May 4, 1962

Washington, D. C.